

Appendix F - Seattle Municipal Code Excerpts

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Contents

SMC CHAPTER 21.36 SOLID WASTE COLLECTION F-1

SMC CHAPTER 14.04 FAIR EMPLOYMENT PRACTICES F-13

SMC CHAPTER 20.44 CITY CONTRACTS-PREVENTION OF DISCRIMINATION..... F-19

SMC CHAPTER 20.46A WOMEN'S AND MINORITY BUSINESS ENTERPRISE UTILIZATION F-25

SMC Chapter 21.36 Solid Waste Collection

Sections

Subchapter I General Provisions

- 21.36.010 Definitions A-B.
- 21.36.012 Definitions C-E.
- 21.36.014 Definitions F-P.
- 21.36.016 Definitions R-Z.
- 21.36.017 Title, declarations and administrative provisions.
- 21.36.018 Enforcement authority.

Subchapter II Solid Waste Collection

- 21.36.025 Unlawful disposal.
- 21.36.026 Household hazardous wastes.
- 21.36.027 Small quantity generator hazardous wastes.
- 21.36.028 Asbestos material and asbestos-containing waste material.
- 21.36.029 Tires and special category wastes.
- 21.36.030 Unlawful hauling of City's Waste-Exceptions.
- 21.36.040 Unlawful disposal sites.
- 21.36.042 Solid waste disposal required-Nonresidential.
- 21.36.044 Containers required-Nonresidential.
- 21.36.050 Garbage containers required-Residential.
- 21.36.060 Garbage cans-Maintenance.
- 21.36.070 Garbage containers-Weight.
- 21.36.080 Placement of garbage containers, bundles and detachable containers.
- 21.36.085 Yardwaste programs.
- 21.36.087 White goods and bulky items.
- 21.36.088 Concrete and asphalt recycling.
- 21.36.090 Paths to garbage storage area.
- 21.36.095 Right to determine disposition of solid waste.
- 21.36.096 Waste screening.

Subchapter III Flow-Control Special Provisions

- 21.36.112 Designation of receiving facilities.
- 21.36.113 Containers-Billing-Unacceptable waste.
- 21.36.114 Enforcement authority-Inspections.
- 21.36.115 Penalties for noncompliance.
- 21.36.116 Third party action to effect compliance.

Subchapter IV Miscellaneous Provisions

- 21.36.180 Incineration and energy recovery facilities.
- 21.36.185 Commercial composting facilities.
- 21.36.190 Abandoned landfills.

Subchapter V Litter Control Code

- 21.36.400 Litter Control Code-Title.
- 21.36.410 Littering.
- 21.36.420 Unlawful dumping of solid waste.
- 21.36.425 Accumulation of solid waste.
- 21.36.430 Unlawful use of City litter receptacles.
- 21.36.440 Unlawful use of solid waste container on private property.
- 21.36.450 Fee on unsecured loads.

Subchapter VI Penalties and Enforcement

- 21.36.920 Violation-Penalty.
- 21.36.922 Civil infractions.
- 21.36.924 Each day a separate violation.
- 21.36.965 Identification.
- 21.36.970 Summary abatement.
- 21.36.975 Reimbursement for City expenses.
- 21.36.980 Crediting of reimbursement to Solid Waste Fund.

Severability: If any portion of this chapter is adjudged to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions.

(Ord. 96003 § 12, 1967.)

Editor's Note:

As used in this subtitle, the term "City Engineer" means "Director of Engineering."

Subchapter I: General Provisions

SMC 21.36.010 Definitions A - B.

1. "Abandoned landfill" means a solid waste landfill disposal site which was completed prior to the requirement to obtain a closure permit.

2. "Alley" means a public or private way which is intended to provide or which provides a roadway for vehicular and pedestrian access to abutting properties and is generally located to the rear or side of those properties.

3. "Apartment hotel" means a building providing accommodations for transient guests in which at least fifty percent (50%) of the gross habitable floor area is used by permanent residents.

4. "Apartment house" means a building or portion thereof containing five (5) or more dwelling units.

5. "Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite and actinolite- tremolite.

6. "Asbestos material" means any material containing at least one percent (1%) asbestos as determined by polarized light microscopy using the Interim Method of the Determination of Asbestos in Bulk Insulation Samples contained in Appendix A of Subpart F in 40 C.F.R. Part 763, unless it can be demonstrated that the material does not release asbestos fibers when crumbled, pulverized or otherwise disturbed.

7. "Asbestos-containing waste material" means any waste that contains asbestos. This term includes asbestos waste from control devices, contaminated clothing, asbestos waste material, materials used to enclose the work area during an asbestos project, and bags or containers that previously contained asbestos.

8. "Boarding or rooming house" means a building other than a hotel, where meals and room, or rooms only, are provided for compensation for nine (9) or more nontransient persons.

9. "Bundle" means one (1) box or carton empty or filled with solid waste, one (1) bag filled with solid waste, or bundle of solid waste, securely bundled so that none of the material blows about and so it is not easily broken apart and which is of such size that the longest dimension does not exceed three feet (3'), the volume does not exceed six (6) cubic feet and the total weight does not exceed sixty (60) pounds, and is in good condition for handling at the time of collection. The box, bag, or carton, if present, must be disposable.

10. "Bundle-of-yardwaste" means "yardwaste" defined in Section 21.36.016 that is placed in a container or securely tied so that none of the material blows away or falls out upon lifting and so that it is not easily broken apart. Its longest dimension may not exceed four feet (4') in length; its diameter may not be

over two feet (2'); and its weight may not exceed sixty (60) pounds.

(Ord. 116419 § 2, 1992: Ord. 114723 § 2, 1989: Ord. 114205 § 1(part), 1988: Ord. 113502 § 2(part), 1987: Ord. 112942 § 1(part), 1986: Ord. 112171 § 1(part), 1985: Ord. 96003 § 1(part), 1967.)

SMC 21.36.012 Definitions C - E.

1. "City" means The City of Seattle.
2. "City's Waste" means all residential and nonresidential solid waste generated within the City, excluding Unacceptable Waste, Special Waste, Construction, Demolition and Landclearing Waste, and materials destined for recycling. City's Waste includes all such waste, regardless of which private or public entity collects or transports the waste. City's Waste includes all waste remaining after recycling.
3. "Clean wood waste" means and will consist of wood pieces generated as byproducts from manufacturing of wood products, hauling and storing of raw materials, tree limbs greater than four inches (4") in diameter and wood demolition waste (lumber, plywood, etc.) thrown away in the course of remodeling or construction, and waste approved for wood-waste recycling by the Director of the Seattle Public Utilities. It excludes clean yardwaste, treated lumber, wood pieces, or particles containing chemical preservatives, composition roofing, roofing paper, insulation, sheetrock, and glass.
4. "Composting" means the controlled degradation of organic waste yielding a product for use as a soil conditioner.
5. "Construction, Demolition and Landclearing Waste" or "CDL Waste" means waste comprised primarily of the following materials:
 - a. Construction Waste: waste from building construction such as scraps of wood, concrete, masonry, roofing, siding, structural metal, wire, fiberglass insulation, other building materials, plastics, styrofoam, twine, baling and strapping materials, cans and buckets, and other packaging materials and containers.
 - b. Demolition Waste: solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures. Demolition Waste consists of, but is not limited to, concrete, brick, bituminous concrete, wood and masonry, composition roofing and roofing paper, steel, and minor amounts of metals like copper. Plaster (i.e., sheet rock or plaster board) or any other material, other than wood, that is likely to produce gases or leachate during its decomposition process and asbestos wastes are not considered to be Demolition Waste.
 - c. Landclearing Waste: natural vegetation and minerals from clearing and grubbing land for development, such as stumps, brush, blackberry vines, tree branches, tree bark, mud, dirt, sod and rocks.
6. "Contaminated Soils" means soils removed during the cleanup of a remedial action site, or a dangerous waste site closure or other cleanup efforts and actions which contain harmful substances but are not designated dangerous wastes. Contaminated Soils may include excavated soils surrounding underground storage tanks, vector wastes (street and sewer cleanings), and soil excavated from property underlying industrial activities.
7. "Contractor" means those contracting with the City to collect and dispose of solid waste as described in this section, or the authorized representative of such contractors.

8. "Dangerous waste" means those solid wastes designated in WAC 173-303-070 through WAC 173-303-103 as dangerous or extremely hazardous waste.

9. "Detachable container" means a watertight, all-metal container, not less than one-half (1/2) cubic yard in capacity and equipped with a tight-fitting metal or other City-approved cover. The term shall also apply to containers of other material of similar size when approved by the Director of Seattle Public Utilities. Containers two (2) cubic yards and under shall be equipped with at least three (3) wheels.

10. "Director of Seattle Public Utilities" means the Director of Seattle Public Utilities of The City of Seattle and authorized employees.

11. "Disposal site" means the areas or facilities where any final treatment, utilization, processing or deposition of solid waste occurs. See also the definition of interim solid waste handling site.

12. "Dwelling unit" in addition to its ordinary meaning includes a room or suite of rooms used as a residence and which has cooking facilities therein, but does not include house trailers in trailer courts, rooms in hotels or motels, or cells or rooms in jails or government detention centers.

13. "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(Ord. 118396 § 138, 1996: Ord. 116412 § 3, 1992: Ord. 115589 § 1, 1991: Ord. 115231 § 1, 1990: Ord. 114723 § 3, 1989: Ord. 114205 § 1(part), 1988: Ord. 113502 § 2(part), 1987: Ord. 112942 § 1(part), 1986: Ord. 112171 § 1(part), 1985: Ord. 96003 § 1(part), 1967.)

SMC 21.36.014 Definitions F - P.

1. "Fraternity, sorority or group student house" means a building occupied by and maintained exclusively for students affiliated with an academic or professional college or university or other recognized institution of higher learning, which is regulated by such institution.
2. "Garbage" means all discarded putrescible waste matter, including small dead animals weighing not over fifteen (15) pounds, but not including sewage or sewage sludge or human or animal excrement or yardwaste.
3. "Garbage can" means a watertight container not exceeding thirty-two (32) gallons in capacity, weighing not over twenty-six (26) pounds when empty and without cover, fitted with two (2) sturdy handles one (1) on each side and a tight cover, except in the case of sunken cans. The term shall also apply to containers of similar size and weight when approved by the Director of Seattle Public Utilities.
4. "Garbage container" means either:
 - a. A garbage can; or
 - b. A mini-can, or thirty-two (32), sixty (60), or ninety (90) gallon cart supplied by the collector and approved by the Director of Seattle Public Utilities for use under the solid waste collection contract.
5. "Hazardous substances" means any liquid, solid, gas or sludge, including any material, substance, product, commodity or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090, 173-303-101, 173-303-102 or 173-303-103.
6. "Health Officer" means the Director of the Seattle-King County Department of Public Health or his/her designated representative.
7. "Household hazardous wastes" means any discarded liquid, solid, contained gas, or sludge, including any

material, substance, product, commodity or waste used or generated in the household, regardless of quantity, that exhibits any of the characteristics or criteria of dangerous waste set forth in Chapter 173.303 WAC.

8. "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

9. "Interim solid waste handling site" means any interim treatment, utilization or processing site engaged in solid waste handling which is not the final site of disposal. Transfer stations, drop boxes, baling and compaction sites, source separation centers, and treatment are considered interim solid waste handling sites.

10. "Litter" means solid waste such as, but not limited to, disposable packages and containers dropped, discarded or otherwise disposed of upon any property.

11. "Mini-can" means a fifteen (15) to twenty (20) gallon container that is supplied by the contractor, made of galvanized metal or plastic, and meets the approval of the Director of Seattle Public Utilities.

12. "Mixed-use building" means a building with both residential and commercial solid waste with common garbage chute(s), and/or the residential and commercial solid waste generated in such building cannot be readily separated.

13. "Passenger vehicle" means any motor vehicle with a passenger car license plate.

14. "Person" means any governmental entity, or any public or private corporation, partnership or other form of association, as well as any individual.

15. "Planting strip" means that part of a street right-of-way between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

16. "Public place" means and includes streets, avenues, ways, boulevards, drives, places, alleys, sidewalks and planting (parking) strips, squares, triangles, and rights-of-way, whether open to the use of the public or not, and the space above or beneath the surface of the same.

(Ord. 118396 § 139, 1996; Ord. 116419 § 4, 1992; Ord. 115589 § 2, 1991; Ord. 114723 § 4, 1989; Ord. 114205 § 1(part), 1988; Ord. 113502 § 2(part), 1987; Ord. 112942 § 1(part), 1986; Ord. 112171 § 1(part), 1985; Ord. 96003 § 1(part), 1967.)

SMC 21.36.016 Definitions R - Z.

1. "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals and glass, that are identified as recyclable material pursuant to The City of Seattle's Comprehensive Solid Waste Plan.

2. "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than incineration (including incineration for energy recovery) or other methods of disposal.

3. "Refuse" means either garbage or rubbish or both garbage and rubbish, and includes litter, but excludes yardwaste.

4. "Rubbish" means all discarded nonputrescible waste matter excluding yardwaste.

5. "Scavenging" means removal of material at a disposal site or interim solid waste handling site without the approval of the site owner or operator or of the Health Officer.

6. "Service unit" means a "garbage container."

7. "Small quantity generator hazardous waste" means any discarded liquid, solid, contained gas, or sludge, including

any material, substance, product, commodity or waste used or generated by businesses, that exhibits any of the characteristics or criteria of dangerous waste set forth in Chapter 173.303 WAC, but which is exempt from regulation as dangerous waste.

8. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, yardwaste, ashes, industrial wastes, infectious wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials. This includes all liquid, solid and semisolid materials which are not the primary products of public, private, industrial, commercial, mining and agricultural operations. Solid waste includes, but is not limited to sludge from wastewater treatment plants, seepage from septic tanks, wood waste, dangerous waste, and problem wastes.

9. "Solid waste container" means a garbage container, detachable container, or any other secure, rigid, watertight container with a tight-fitting lid.

10. "Special category wastes" means wastes whose disposal is limited by certain restrictions and limitations, as identified in Section 21.36.029.

11. "Special Waste" means contaminated soils, asbestos and other waste specified by Washington Waste Systems in the Special Waste Management Plan included in the Operations Plan as requiring special handling or disposal procedures.

12. "Street" means a public or private way, other than alleys, used for public travel.

13. "Sunken can" means a garbage can which is in a sunken covered receptacle specifically designed to contain garbage cans and where the top of the garbage can is approximately at the ground level.

14. "Unacceptable Waste" means all waste not authorized for disposal at the Columbia Ridge Landfill and Recycling Center or successor site designated by the City, by those governmental entities having jurisdiction or any waste the disposal of which would constitute a violation of any governmental requirement pertaining to the environment, health or safety. Unacceptable Waste includes any waste that is now or hereafter defined by federal law or by the disposal jurisdiction as radioactive, dangerous, hazardous or extremely hazardous waste and vehicle tires in excess of those permitted to be disposed of by the laws of the disposal jurisdiction.

15. "Yardwaste" means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and rocks not over four inches (4") in diameter; and biodegradable waste approved for the yardwaste programs by the Director of the Seattle Public Utilities. It excludes loose soils, food waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four inches (4") in diameter; human or animal excrement; and soil contaminated with hazardous substances.

(Ord. 118396 § 140, 1996; Ord. 116419 § 5, 1992; Ord. 115589 § 3, 1991; Ord. 115231 § 2, 1990; Ord. 114723 § 5, 1989; Ord. 114205 § 1(part), 1988; Ord. 113502 § 2(part), 1987; Ord. 112942 § 1(part), 1986; Ord. 112171 § 1(part), 1985; Ord. 96003 § 1(part), 1967.)

SMC 21.36.017 Title, declarations, and administrative provisions.

A. Chapters 21.36 and 21.40 of the Seattle Municipal Code shall be titled the "Solid Waste Code" of the City and may be referred to as such.

B. The Solid Waste Code is declared to be an exercise of the police power of the City to promote the public health, safety and general welfare, and its provisions shall be liberally construed for the accomplishment of that purpose.

C. The Solid Waste Code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. Upon presentation of proper credentials, the enforcing authority or authorized representative of the enforcing authority may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued warrant, enter at reasonable times any building or premises subject to the consent or warrant to enforce the provisions of or perform the duties imposed by the Solid Waste Code.

E. Nothing in the Solid Waste Code is intended to be nor shall be construed to create or form the basis for any liability of the City or any of its officers, employees, or agents for any injury or damages resulting from the failure of any person to comply with the provisions of this Code, or by reason of any inspection, notice, order, or other action or inaction by or of the City or any of its officers, employees or agents in connection with the implementation or enforcement of this Code.

(Ord. 116419 § 6, 1992.)

SMC 21.36.018 Enforcement authority.

A. The Director of Seattle Public Utilities is authorized and directed to supervise and manage the collection and disposal of solid waste under this chapter and to provide, designate, and supervise places for the disposal thereof, and shall with the assistance of the Chief of Police have general charge of supervision over the administration and enforcement of this chapter; provided the Health Officer shall enforce the provisions of Sections 21.36.096 (Waste screening), 21.36.180 (Incineration and energy recovery facilities), and 21.36.185 (Commercial composting facilities). The fire, health, engineering, construction and land use and other appropriate City departments are authorized to assist in enforcing the provisions of this chapter.

B. Upon a determination that in order to promote the public health, safety or welfare and that the successful operation of the system for collection and disposal of solid waste within the City requires such action, the Director of Seattle Public Utilities may direct that anyone, including but not limited to the persons or organizations exempted from the proscription of Section 21.36.030, must deposit solid waste hauled by them at designated disposal sites or interim solid-waste handling sites. The determination by the Director of Seattle Public Utilities shall set forth the reasons therefor, shall be filed with the City Clerk and mailed on the date of filing to all persons and organizations covered by exemptions A through D and F of Section 21.36.030, and shall be published within three (3) days thereafter in the City official newspaper.

C. The Director of Seattle Public Utilities may request that the Chief of Police commission authorized representatives of the Director as nonuniformed special police officers with powers to enforce the provisions of the Solid Waste Code.

(Ord. 118396 § 141, 1996: Ord. 117441 § 5, 1994: Ord. 116419 § 7, 1992: Ord. 114723 § 19, 1989: Ord. 113502 § 6, 1987: Ord. 107208 § 3, 1978: Ord. 96003 § 10, 1967.)

Subchapter II Solid Waste Collection

SMC 21.36.025 Unlawful disposal.

A. The following shall not be deposited or discarded into any commercial or residential garbage can, container or receptacle: Dead animals over fifteen (15) pounds; sewage; human or animal excrement (including excrement from disposable diapers), with the exception of animal excrement deposited in a public or residential garbage can, provided the animal excrement is wrapped in a closed, leak-proof bag or container; hot ashes, household hazardous waste, as set forth in Section 21.36.026; small quantity generator hazardous waste; asbestos material; asbestos-containing waste material; tires; dangerous waste; radioactive wastes; and explosives.

B. The following shall not be deposited or discarded at any interim solid waste handling site, except as specifically provided in Sections 21.36.026 through 21.36.029: Dead animals over fifteen (15) pounds; sewage; human or animal excrement (including excrement from disposable diapers); hot ashes; household hazardous waste, as set forth in Section 21.36.026; small quantity generator hazardous waste; asbestos material; asbestos-containing waste material; tires; special category waste; dangerous waste; radioactive wastes; and explosives.

C. Infectious waste shall be disposed according to the provisions of Seattle Municipal Code Chapter 21.43.

D. Operators and/or attendants at disposal sites and/or interim solid waste handling sites shall have the authority to refuse to accept any prohibited or restricted solid waste.

(Ord. 117760 § 1, 1995: Ord. 114723 § 10, 1989.)

Subchapter II Solid Waste Collection

SMC 21.36.025 Unlawful disposal.

A. The following shall not be deposited or discarded into any commercial or residential garbage can, container or receptacle: Dead animals over fifteen (15) pounds; sewage; human or animal excrement (including excrement from disposable diapers), with the exception of animal excrement deposited in a public or residential garbage can, provided the animal excrement is wrapped in a closed, leak-proof bag or container; hot ashes, household hazardous waste, as set forth in Section 21.36.026; small quantity generator hazardous waste; asbestos material; asbestos-containing waste material; tires; dangerous waste; radioactive wastes; and explosives.

B. The following shall not be deposited or discarded at any interim solid waste handling site, except as specifically provided in Sections 21.36.026 through 21.36.029: Dead animals over fifteen (15) pounds; sewage; human or animal excrement (including excrement from

disposable diapers); hot ashes; household hazardous waste, as set forth in Section 21.36.026; small quantity generator hazardous waste; asbestos material; asbestos-containing waste material; tires; special category waste; dangerous waste; radioactive wastes; and explosives.

C. Infectious waste shall be disposed according to the provisions of Seattle Municipal Code Chapter 21.43.

D. Operators and/or attendants at disposal sites and/or interim solid waste handling sites shall have the authority to refuse to accept any prohibited or restricted solid waste.

(Ord. 117760 § 1, 1995; Ord. 114723 § 10, 1989.)

SMC 21.36.026 Household hazardous wastes.

A. It is generally recommended that no household hazardous wastes are disposed in municipal solid waste. Specific household hazardous wastes which are prohibited from disposal as municipal solid waste include nonedible oils; flammable liquids and solids including fuels, solvents, paint thinners, and degreasers; pesticides, including herbicides, insecticides and wood preservatives; corrosive materials; PCB capacitors and ballasts; mercury (such as thermometers and mercury switches); vehicle batteries; hobby chemicals and artists' paints; and liquid paints.

B. The Director of Seattle Public Utilities by Administrative Rule, pursuant to Seattle Municipal Code Section 3.12.020, may prohibit additional substances from disposal or delete substances from the list in subsection A and authorize their disposal.

C. Household hazardous wastes prohibited from disposal as municipal solid waste are also prohibited from disposal in places where disposal of solid waste is prohibited.

D. Household hazardous wastes prohibited from municipal solid waste disposal shall be disposed of at special collection facilities, locations, and/or events designated by the Director of Seattle Public Utilities.

E. When empty, containers for household hazardous products may be disposed of as refuse.

(Ord. 118396 § 142, 1996; Ord. 114723 § 11, 1989.)

SMC 21.36.027 Small quantity generator hazardous wastes.

Small quantity generator hazardous waste shall be managed according to the provisions of Chapter 173.303 WAC, except that small quantity generator wastes are prohibited from disposal as municipal solid waste.

(Ord. 114723 § 12, 1989.)

SMC 21.36.028 Asbestos material and asbestos-containing waste material.

Asbestos material shall be handled and disposed pursuant to 40 C.F.R. 61 Subpart M, WAC 173-303, and Article 10 of Regulation No. 1 Puget Sound Air Pollution Control Agency (PSAPCA) as follows:

A. Removal. Persons removing asbestos material shall provide advance notification to PSAPCA, which enforces regulations concerning removal and disposal. Asbestos-containing waste material must be wetted down during removal

to reduce airborne emissions of particulate matter. The wet asbestos-containing wastes shall be sealed into leak-tight containers or placed in one or more plastic bags with a combined six (6) mils thickness or greater, identified with the proper warning label.

B. Disposal.

1. It shall be unlawful for anyone to deposit, throw, place, discard or deliver, or cause to be deposited, thrown, placed, discarded or delivered any asbestos-containing waste material on any property, public or private, or in any public place; provided asbestos-containing waste material may be delivered to disposal sites or interim solid waste handling sites designated by the Director of Seattle Public Utilities for such purpose.

2. Disposal sites or interim solid waste handling sites which are designated to receive asbestos-containing waste material must be approved by the Seattle-King County Department of Public Health for this purpose.

(Ord. 118396 § 143, 1996; Ord. 114723 § 13, 1989.)

SMC 21.36.029 Tires and special category wastes.

A. Tires. The Director of Seattle Public Utilities may authorize collection of tires at City of Seattle transfer stations according to restrictions established by Administrative Rule, in accordance with Seattle Municipal Code Section 3.12.020.

B. Special Category Wastes. The Director of Seattle Public Utilities may define by Administrative Rule, pursuant to Seattle Municipal Code Section 3.12.020, special restrictions and limitations on the disposal of certain types of wastes which cannot be handled safely through the municipal solid waste collection system. Restricted materials may include items over certain sizes or weights, and dust-producing materials.

C. Polystyrene Packaging Pieces. The Director of Seattle Public Utilities may set special restrictions and limitations on the disposal of polystyrene packaging pieces in solid waste to be collected by the City or a contractor making collection for the City. Restrictions may include containment requirements for polystyrene packaging pieces or restrictions on disposal locations for the packaging pieces.

(Ord. 118396 § 144, 1996; Ord. 116419 § 9, 1992; Ord. 115590 § 1, 1991; Ord. 114723 § 14, 1989.)

SMC 21.36.030 Unlawful hauling of City's Waste-Exceptions.

It is unlawful for anyone, except the following, to haul City's Waste through the streets in the City:

A. The University of Washington or its contractor;

B. Military establishments or their contractors;

C. The City's solid waste contractors;

D. Anyone authorized to collect solid waste in the City under RCW Chapter 81.77;

E. Business concerns, as to City's Waste originating within their own establishments; and

F. The Seattle Housing Authority or its contractor; provided, however, that the exempted persons and organizations may be required to deposit such City's Waste at disposal, processing, or recovery sites provided and/or designated by the Director of Seattle Public Utilities pursuant to Section 21.36.018.

(Ord. 118396 § 145, 1996: Ord. 116419 § 10, 1992: Ord. 116220 § 1, 1992: Ord. 113502 § 4, 1987: Ord. 107208 § 2, 1978: Ord. 96003 § 3, 1967.)

SMC 21.36.040 Unlawful disposal sites.

It is unlawful for anyone to deliver and/or deposit any solid waste that is City's Waste generated within the City at any disposal site other than a disposal, processing, or recovery site provided and/or designated by the Director of Seattle Public Utilities pursuant to Sections 21.36.030 and 21.36.018.

(Ord. 118396 § 146, 1996: Ord. 116419 § 11, 1992: Ord. 113502 § 5, 1987: Ord. 107208 § 4, 1978: Ord. 96003 § 3A, 1967.)

SMC 21.36.042 Solid waste disposal required-Nonresidential.

For solid waste that is City's Waste, every owner, tenant, occupant, or other person responsible for the condition of private property that is not used as a residence or dwelling shall deliver, or shall ensure lawful delivery of, the City's Waste to the receiving facility designated by City and shall keep receipts as proof of delivery.

(Ord. 117441 § 6, 1994: Ord. 116419 § 12, 1992.)

SMC 21.36.044 Containers required-Nonresidential.

Every owner, tenant, occupant, and other person responsible for the condition of private property that is not used as a residence or dwelling shall have and use solid waste containers of a number and size sufficient to contain all solid waste generated on the site and shall provide for lawful disposal of all such solid waste.

(Ord. 117441 § 7, 1994.)

SMC 21.36.050 Garbage containers required-Residential.

A. All owners and occupants of residences and other dwellings shall have and use a sufficient number of garbage containers to hold all of their garbage and ashes. Additional amounts of rubbish, bundled in bundles as defined in this chapter, may be set out for collection. At least one (1) service unit must be a garbage can, mini-can, or collector-supplied cart for all service levels greater than zero (0) units.

B. Ashes, bagged or boxed, will be placed in garbage cans, collector-supplied containers, or detachable containers, but hot ashes shall not be put out for collection. No garbage shall be placed in bundles.

C. Yardwaste may be set out for separate curbside collection, but shall not be mixed with other solid waste.

(Ord. 117441 § 8, 1994: Ord. 116419 § 13, 1992: Ord. 116187 § 1, 1992: Ord. 114205 § 2, 1988: Ord. 112942 § 2, 1986: Ord. 110443 § 1, 1982: Ord. 109131 § 1, 1980: Ord. 96003 § 4, 1967.)

SMC 21.36.060 Garbage cans-Maintenance.

A. The owner and/or occupant of any premises shall be responsible for the safe and sanitary storage of all solid wastes accumulated at that premises until it is removed to a disposal site or interim solid waste handling site.

B. All garbage cans and detachable containers shall be kept tightly covered and in good condition for garbage storage and handling, and garbage cans and detachable containers which leak or have jagged edges or holes shall not be used. The Director of Seattle Public Utilities, at the request of the contractor, in writing, shall determine whether or not the condition of any garbage can, garbage container, or detachable container is satisfactory for use.

(Ord. 118396 § 147, 1996: Ord. 114723 § 16, 1989: Ord. 96003 § 5, 1967.)

SMC 21.36.070 Garbage containers-Weight.

A. Garbage containers, when filled, shall not exceed the following limits:

Garbage can	60 pounds
Mini-can	30 pounds
30-gallon carts	60 pounds
60-gallon carts	120 pounds
90-gallon carts	180 pounds

B. The contents of a container shall dump out readily when it is inverted.

(Ord. 114205 § 3, 1988: Ord. 96003 § 6, 1967.)

SMC 21.36.080 Placement of garbage containers, bundles and detachable containers.

A. All garbage cans and bundles for backyard collection shall be placed by the occupant in a convenient, accessible location as near as practicable to the approximate rear of the building or near the alley, upon the ground level or ground floor, or in a sturdy rack not over fourteen inches (14") above such level or floor, except that sunken cans may be below the ground level. Where no other suitable area is available, garbage cans or bundles may be placed at a location selected by the customer and the Director of Seattle Public Utilities. Garbage containers or bundles and bundles-of-yardwaste for curbside/alley collection shall be placed as follows:

1. From properties with level planting strips, in the planting strip or driveway within one (1) yard of the curb;

2. From properties with alleys of sufficient width, in the alley or within one (1) yard of the alley gate if the gate is within one (1) yard of the alley;

3. From properties with sidewalks but not planting strips, on the owner's property, within one (1) yard of the sidewalk, if level;

4. When the foregoing location slopes at a grade making placement of a container difficult, the nearest reasonable level area; and

5. If the premises has no sidewalk or planting strip, dense shrubbery or extraordinary circumstances preclude such a location, from a placement suitable to the customer and convenient to the collection contractor.

B. Containers and bundles for collection shall not be placed on the sidewalk or in the planting strip or the alley for collection until a reasonable time prior to collection. Containers shall be removed within a reasonable time thereafter.

C. Detachable containers may be stored within a building but shall be readily accessible for servicing without unnecessary delay or special collection equipment.

(Ord. 118396 § 148, 1996: Ord. 114205 § 4, 1988: Ord. 112171 § 3, 1985: Ord. 96003 § 7, 1967.)

SMC 21.36.085 Yardwaste programs.

Yardwaste shall not be mixed with garbage, refuse or rubbish for disposal.

A. Curbside Yardwaste Collection. Yardwaste for collection under the City's curbside program shall be set apart from refuse for pickup in a manner that is readily identifiable by the collectors. Yardwaste shall be defined as set forth in Section 21.36.016, except that yardwaste for curbside collection shall not include wood or tree limbs over four feet (4') long. Only yardwaste generated at the dwelling unit shall be collected at curbside.

B. Transfer Station Yardwaste. All yardwaste delivered to the City's transfer stations shall be separated from garbage, refuse and rubbish and deposited in an area designated for yardwaste. Yardwaste shall be defined as set forth in Section 21.36.016, except that yardwaste delivered to the transfer station shall not include wood or tree limbs over eight feet (8') long.

(Ord. 114723 § 17, 1989: Ord. 114205 § 5, 1988.)

SMC 21.36.087 White goods and bulky items.

A. The Director of Seattle Public Utilities may determine from time to time the items eligible for pickup under the Seattle Public Utilities' program for collection of white goods and bulky items, and after consultation with the Purchasing Agent, arrange for the disposition of the items collected without regard to the procedures of Section 3.18.824.

B. "White goods" are large household appliances, such as refrigerators, iceboxes, stoves, washing machines, dryers, dishwashing machines and air conditioners. "Bulky items" include and are illustrated by such articles for household use as furniture, mattresses, box springs, television sets, stereos, and wardrobes. Neither term includes motor vehicles or hulks; car parts and tires; commercial machinery or equipment; lumber and building materials; or hazardous wastes.

C. By delivering possession to the collector, the customer relinquishes title to the white goods and bulky items picked up. The Seattle Public Utilities may decline to accept such items that contain refuse, contraband, or hazardous wastes.

D. The Director of Seattle Public Utilities may:

1. Remove all hazardous and toxic constituents, including the recovery of CFCs (chloro-fluorocarbons), from white goods delivered to the City recycling and disposal stations and require that the resultant scrap metal not be landfilled;
2. Accept a maximum of two (2) white goods per load at a rate established in subsection A of Section 21.40.080 and subsection D of Section 21.40.080;
3. Reject vehicle loads at the City's recycling and disposal stations which contain more than two (2) white goods or white goods from non-Seattle residents and provide

information to the haulers of rejected loads on alternative disposal sites for white goods available within Seattle;

4. Direct white goods from charitable organizations qualified under Section 21.40.080 to the City's selected white-goods processor;

(Ord. 118396 § 149, 1996: Ord. 116250 § 2, 1992: Ord. 114205 § 6, 1988.)

SMC 21.36.088 Concrete and asphalt recycling.

Any concrete, cement concrete, or asphalt (as defined in SMC Section 3.18.902) generated in the process of City street, bridge, drainage, or other public works projects, whether those projects are performed by the City or under contract with the City, shall be recycled or reused unless its quality or quantity preclude efficient recovery by a recycling facility.

(Ord. 116726 § 7, 1993.)

SMC 21.36.090 Paths to garbage storage area.

All walks, paths, and driveways from the garbage can storage area to the place of loading shall have an unrestricted overhead clearance of not less than eight feet (8').

(Ord. 96003 § 8, 1967.)

SMC 21.36.095 Right to determine disposition of solid waste.

The City acquires the right and power to determine the disposition of solid waste collected or delivered to the City's recycling, transfer and disposal facilities. Disposition may include the establishment of salvage operations. The City may decline to accept and may return hazardous wastes and other material ineligible for collection under the City's solid waste collection ordinances.

(Ord. 116419 § 14, 1992: Ord. 114205 § 7, 1988.)

SMC 21.36.096 Waste screening.

A. Dangerous Waste. The Health Officer may screen any wastes that are being disposed, and that are suspected of being a regulated dangerous waste. The screening process may involve certified testing, a disclosure of the waste constituents and waste generation process, and other additional information. If the Health Officer determines that the waste is not a regulated dangerous waste but still poses a significant threat to the public health, safety or the environment, he/she may direct the generator or transporter to dispose of the waste at a specific type of disposal site. If the Health Officer determines that the waste is a regulated dangerous waste, he/she shall notify the Department of Ecology which shall have full jurisdiction regarding handling and disposal. The Dangerous Waste Regulations, WAC 173-303, shall be considered when screening and making waste determinations.

B. Disposal Sites. If during inspections of waste the

Health Officer observes waste suspected of being regulated dangerous waste because of physical properties of the waste, he/she shall have the authority to require the site operator to segregate and hold any such waste. If the Health Officer determines that testing is required to identify the waste, the generator shall be responsible for such analysis, and if the generator is not known, the site operator shall be responsible for funding such analysis. The disposal site operator and/or attendants shall have similar authority not to accept suspect wastes.

C. Procedures. When such wastes are identified as being suspect dangerous wastes, the Health Officer may issue a notice for requirement of screening. This notice will specify requirements which must be met to satisfy the screening process and a schedule for compliance.

(Ord. 114723 § 18, 1989.)

Subchapter III Flow-Control Special Provisions

SMC 21.36.112 Designation of receiving facilities.

A. Union Pacific's Seattle Intermodal Facility or successor receiving facility specified by the City is hereby designated as the receiving facility for disposal of all City's Waste, including waste left over after separating out Special Waste, CDL Waste or materials destined for recycling. All generators, handlers, and collectors of City's Waste shall deliver or, for example, by taking City's Waste to a City transfer station, shall ensure delivery of all City's Waste to Union Pacific's Seattle Intermodal Facility or successor receiving facility designated by the City, in a manner specified by the Director of Seattle Public Utilities.

B. Special Waste (excluding Contaminated Soils) may be disposed at any permitted solid waste handling facility; provided, that no City's Waste, Special Waste or CDL Waste generated within The City of Seattle shall be disposed of at a facility owned or operated by King County, unless specifically agreed by the City and King County.

C. The City of Seattle's North and South Recycling Disposal Stations, Waste Management of Seattle's Eastmont Transfer Station and RABANCO's Third and Lander Transfer Station, or successor receiving facilities specified by the City, are hereby designated as the receiving facilities for disposal of all nonrecycled CDL Waste and Contaminated Soils generated within the City. All generators, handlers and collectors of CDL Waste and Contaminated Soils shall deliver or ensure delivery of all nonrecycled CDL Waste and Contaminated Soils to the receiving facilities hereby designated by the City.

D. Each receiving facility designated in subsection C of SMC Section 21.36.112 or successor receiving facility designated by the City, shall submit to the Director of Seattle Public Utilities by the twentieth day of each month, commencing February 20, 1993, on a form available from the Director of Seattle Public Utilities, a monthly flow report. The report shall document, for the previous month, (1) the number of trucks delivering waste and recyclables, (2) the type and amount (in tons) of waste and recyclables delivered to the receiving facility from each political jurisdiction in which waste or recyclables originated and (3) the type and amount (in tons) of all waste and recyclables leaving the receiving facility for each final destination. For waste, "type" means City's Waste, CDL Waste, Contaminated Soils, wood waste, Yardwaste or Special Waste; for recyclables, "type" means plastics, metal, paper, glass, wood waste, yardwaste and inert materials. Type of

recyclables shall, at a minimum, be specified further as mixed waste paper, newspaper, corrugated paper, tin, iron, aluminum, glass, PET plastic, HDPE plastic, other plastic, and magazines.

E. In order to facilitate the designation of transfer stations and receiving facilities or successor receiving facilities, the Director of Seattle Public Utilities shall:

1. Establish any specifications and procedures determined necessary to address the manner in which waste is identified, packaged, loaded, containerized or delivered to transfer stations or receiving facilities and establish any other specifications and procedures determined necessary for the City to fulfill its obligations under its contract for the transportation and disposal of waste;

2. Mail, pursuant to SMC Section 21.36.018, a notice of the designated receiving facilities and specifications and procedures for delivery of waste to the facilities. In addition, the notice shall be mailed to all persons and organizations covered by exemptions A through E of SMC Section 21.36.030;

3. Publish such notice in the City official newspaper within three (3) days of mailing such notice.

(Ord. 118396 § 150, 1996: Ord. 116454 § 1, 1992: Ord. 116419

§ 16, 1992: Ord. 115589 § 4, 1991.)

SMC 21.36.113 Containers-Billing-Unacceptable waste.

A. Containers shall be provided by Washington Waste Systems, Inc. to transfer stations in the City for delivery of City's Waste to the designated receiving facility. All transfer stations delivering City's Waste to the designated receiving facility shall load each container with waste, seal it with a cargo security seal and prepare a bill of lading in accordance with the procedures established by the Director of Seattle Public Utilities.

B. All persons shall use reasonable care in the handling of the containers supplied by Washington Waste Systems, Inc. and shall be responsible for repair or replacement of containers they damage or destroy through their own negligence. Washington Waste Systems, Inc. shall be responsible for ordinary wear and tear.

C. All persons required to deliver City's Waste to the designated receiving facility shall be billed by the City at the rates specified by ordinance.

D. City's Waste delivered to the designated receiving facility shall be in compliance with all applicable federal, state, and local environmental health laws, rules, and regulations. The designated receiving facility and the Columbia Ridge Landfill or successor landfill are authorized to reject all Unacceptable Waste and shall not take title to Unacceptable Waste.

(Ord. 118396 § 151, 1996: Ord. 116419 § 17, 1992: Ord. 115589 § 5, 1991.)

SMC 21.36.114 Enforcement authority-Inspections.

A. The Director of Seattle Public Utilities and designated solid waste enforcement officers are authorized and directed to enforce the flow provisions of this chapter.

B. The Director of Seattle Public Utilities and designated solid waste enforcement officers are authorized

to make lawful inspection of the premises of any person suspected of violating the flow provisions of this chapter and to inspect the books and accounts related to the subject of this chapter.

(Ord. 118396 § 152, 1996: Ord. 115589 § 6, 1991.)

SMC 21.36.115 Penalties for noncompliance.

In addition to any other sanction or remedial procedure which may be available, including the penalties listed in SMC Section 21.36.920, any person violating or failing to comply with any provision of SMC 21.36.112 A shall:

A. On the first violation:

1. Pay to the City the amount that would have been owed to the City had the waste been delivered to the receiving facility as required; and in addition
2. Pay for the actual cost to the City of investigating and bringing the enforcement action.

B. On the second violation, pay double the amounts set forth in subsections A1 and A2 of this section.

C. On the third and subsequent violations, pay treble the amounts set forth in subsections A1 and A2 of this section.

(Ord. 116419 § 18, 1992: Ord. 115589 § 7, 1991.)

SMC 21.36.116 Third party action to effect compliance.

Washington Waste Systems, Inc., on its own behalf or as the City's agent, is hereby authorized to make a claim and bring suit directly against any person who violates flow control provisions of this chapter, and is further authorized to recover the amount per ton that the City was contractually required to pay Washington Waste Systems, Inc., for each ton not actually delivered to the receiving facility, and recovery of amounts owed to the City for its services, penalties owed to the City for repeat violations under SMC 21.36.115, plus recovery of Washington Waste Systems, Inc.'s costs, including witness fees and attorney fees, in detecting such diversion and in prosecuting the claim and suit for the violation.

(Ord. 115589 § 8, 1991.)

Subchapter IV Miscellaneous Provisions

SMC 21.36.180 Incineration and energy recovery facilities.

Incineration and energy recovery facilities shall be permitted and managed according to the provisions of Seattle Municipal Code Chapter 21.44. In addition, the following requirements shall apply:

A. Disposal of Process Water. All water from an incinerator or energy recovery facility shall be discharged into a disposal system approved by the Health Officer and Metro. The treated discharge water shall not violate applicable water quality standards.

B. Pre-Use Inspection and Performance Tests. Upon completion of the facility and prior to initial operation, the Health Officer and Puget Sound Pollution Control Agency (PSAPCA) shall be notified. The Health Officer shall inspect the facility both prior to and during the performance tests. A report covering the results of the performance test with all supporting data shall be certified by the design engineer of the project and submitted to the Health Officer.

C. Failure to Meet Standards. The Health Officer shall have the authority to close down an incinerator or energy recovery facility that does not meet all applicable federal, state and PSAPCA standards.

(Ord. 114723 § 21, 1989.)

SMC 21.36.185 Commercial composting facilities.

Commercial composting facilities shall be permitted and managed according to the provisions of Seattle Municipal Code Chapter 21.44 for recycling facilities. In addition, the following requirements shall apply:

A. Generators of compost for retail sales shall submit chemical analyses and reports to the Health Officer in sufficient frequency to demonstrate that the resulting product does not contain levels of chemicals or pathogens that could create a risk to the public health.

B. If levels of chemicals or pathogens are found which could create a risk to the public health, the Health Officer may prohibit or restrict use of the product. Written notices shall be provided to the compost user of any restrictions imposed.

C. Generators of sewage sludge compost must follow the methods and procedures established in the Best Management Practices for Use of Municipal Sewage Sludge, developed by the Washington State Department of Ecology.

D. Odorous material such as spoiled foods, blood and slaughterhouse wastes shall be immediately processed to prevent odors.

E. The composted material shall contain no sharp particles which would cause injury to persons handling the compost.

(Ord. 114723 § 22, 1989.)

SMC 21.36.190 Abandoned landfills.

A. All abandoned landfills shall be maintained by the owner and/or operator so as not to create a risk to the public health. The Health Officer shall have the authority to perform methane monitoring, surface water, groundwater and leachate monitoring, and to monitor for any other environmental conditions at abandoned landfills.

B. The Health Officer may order the owner and/or operator to perform monitoring or any remedial measures necessary to protect the public health and the environment. Any person aggrieved by any order issued under this section may appeal the order to the Seattle Board of Health, by requesting in writing an appeal hearing before the Board of Health or its designee. The request shall be filed within ten (10) days of the service of the order, and shall briefly state the reasons for the appeal. Enforcement of the order shall be staged during the pendency of the appeal.

(Ord. 114723 § 23, 1989.) Subchapter V Litter Control Code

SMC 21.36.400 Litter Control Code-Title.

This subchapter, Seattle Municipal Code Sections 21.36.400 through 21.36.450, shall be titled the "Litter Control Code" of the City and may be referred to as such.

(Ord. 116419 § 20(part), 1992.)

SMC 21.36.410 Littering.

A. This section applies only to litter in the amount of one (1) cubic foot or less which does not contain hazardous substances.

B. No person shall throw, discard, or deposit litter on any street, sidewalk, or other public property within the City, on any private property within the City and not owned by the person, or in or upon any body of water within the jurisdiction of the City, whether from a vehicle or otherwise; except:

1. When the property is designated by The State of Washington or any of its agencies or political subdivisions or by the City for the disposal of litter or other solid waste and such person is authorized to use the property in such manner; or

2. Into a litter receptacle, garbage container or other solid waste container in a manner in which the litter will be prevented from being carried or deposited by the elements or otherwise on any street, sidewalk, or other public or private property.

C. No owner, tenant, or other person responsible for the condition of a construction site shall cause or allow any litter from the site to be deposited by the elements or otherwise on any other public or private property in the City. During such time as the site is not being used, all litter shall be stored or deposited in garbage containers or other solid waste containers in such a manner as to prevent the litter from being deposited on any other public or private property.

D. No person shall throw, discard, sweep or deposit any accumulation of litter from public or private property into any gutter or stormwater drain within the City.

(Ord. 116708 § 3, 1993: Ord. 116419 § 20(part), 1992.)

SMC 21.36.420 Unlawful dumping of solid waste.

It is unlawful for anyone to dump, throw, or place solid waste on any property, public or private, or in any public place except, as authorized by city ordinance, in a litter container, solid waste container, or in a bundle as described in this chapter, or upon or at a disposal site or interim solid waste handling site provided and/or designated by the Director of Seattle Public Utilities pursuant to Section 21.36.018. Anyone who dumps, throws, or places solid waste in violation of this section shall remove and properly dispose of it. This section does not apply to dumping, throwing or placing litter in the amount of one (1) cubic foot or less which does not contain hazardous substances.

(Ord. 118396 § 153, 1996: Ord. 117441 § 9, 1994: Ord. 116419 § 21, 1992: Ord. 114723 § 6, 1989: Ord. 113502 § 2, 1987: Ord. 112171 § 2, 1985: Ord. 107208 § 1, 1978: Ord. 96003 § 2, 1967.)

SMC 21.36.425 Accumulation of solid waste.

A. It shall be unlawful for any person to keep solid waste or allow solid waste to accumulate on any property, or in any public place, except in a litter receptacle, in a solid waste container, or in a bundle as described in this chapter, or as otherwise authorized by ordinance or by the Director of Seattle Public Utilities. This subsection applies to any solid waste accumulation of which the total volume if gathered together is in an amount in excess of one

(1) cubic foot or which contains any hazardous substances or which is an immediate threat to the health or safety of the public.

B. It shall be unlawful for any owner or occupant of abutting private property, residential or nonresidential, to allow the accumulation of any solid waste on sidewalks or planting strips, whether the solid waste is deposited by such owner or occupant or not. Solid waste that is prohibited to accumulate includes but is not limited to litter, cigarette butts, burning or smoldering materials, garbage, and rubbish. This subsection applies to any solid waste accumulation of which the total volume if gathered together is in an amount in excess of one (1) cubic foot or which contains any hazardous substances or which is an immediate threat to the health or safety of the public. This provision shall not apply:

1. To the Sheriff when removing the contents of a building to the sidewalk or planting strip pursuant to an eviction ordered by the Superior Court;

2. To firefighters placing debris on the sidewalk or planting strip in the course of extinguishing a fire or explosion;

3. To the use of receptacles placed or authorized by the City for the collection of solid waste on sidewalks or planting strips; or

4. To accumulations temporarily authorized under a street use permit.

(Ord. 118396 § 154, 1996: Ord. 117441 § 10, 1994: Ord. 116419 § 22, 1992: Ord. 114723 § 9, 1989: Ord. 113502 § 3(part), 1987.)

SMC 21.36.430 Unlawful use of City litter receptacles.

Except as authorized by the Director of Seattle Public Utilities, it shall be unlawful to place in any receptacle provided by the City for litter disposal any solid waste accumulated on private property or generated by any business, including but not limited to burning or smoldering materials, asbestos material, asbestos-containing waste material, yardwaste, dangerous waste, household hazardous waste, small quantity generator hazardous waste, human or animal excrement and dead animals; nor shall the contents of any such litter receptacle be removed or disturbed by anyone except as authorized by the Director of Seattle Public Utilities.

(Ord. 118396 § 155, 1996: Ord. 117441 § 11, 1994: Ord. 116419 § 23, 1992: Ord. 114723 § 7, 1989: Ord. 113502 § 3(part), 1987.)

SMC 21.36.440 Unlawful use of solid waste container on private property.

It is unlawful for anyone not authorized by the property owner or occupant to deposit any material in any solid waste container on private property or on a sidewalk or a planting strip abutting private property.

(Ord. 117441 § 12, 1994: Ord. 116419 § 24, 1992: Ord. 96003 § 9, 1967.)

SMC 21.36.450 Fee on unsecured loads.

A. Every vehicle delivering solid waste to a staffed interim solid waste handling site or a staffed disposal site

shall have its load tied, covered, or confined in such a manner as to prevent any part of the load from leaving the vehicle while the vehicle is in motion. If the load is not secured in such a manner and the vehicle is not exempt pursuant to subsection B, the operator of the vehicle delivering the load shall pay, in addition to the basic disposal charge or rate, a fee at the staffed solid waste handling site or staffed disposal site according to the following scale, effective January 1, 1994:

Cars (vehicles with \$3.00
passenger license
plates)

Trucks (vehicles with \$5.00 for a load of
truck license plates) a ton or less or
\$10.00 for a load of
more than a ton

B. A vehicle transporting sand, dirt or gravel in compliance with the provisions of RCW 46.61.655, as now existing or hereafter amended, shall not be required to secure or cover a load or pay a fee pursuant to this section.

C. The fee collected under subsection A of this section shall be paid to The City of Seattle no less often than quarterly and shall be deposited in the Solid Waste Fund.

(Ord. 116927 § 1, 1993.)

Subchapter VI Penalties and Enforcement

SMC 21.36.920 Violation-Penalty.

A. Except for a violation designated by this chapter as a civil infraction, anyone who shall violate or fail to comply with any provision of this chapter may, upon conviction, be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment in the City Jail for a period of not exceeding one (1) year, or by both such fine and imprisonment.

B. Alternatively, except for a violation designated by this chapter as a civil infraction, the violation of or failure to comply with any provision of this chapter shall be subject to a civil penalty in the amount of Fifty Dollars (\$50.00) for each violation and the amount of Fifty Dollars (\$50.00) per day for each additional day of a continuing violation. To collect the penalty imposed by this subsection, the City shall file a civil action in the Municipal Court.

C. The penalties provided in this section are in addition to any other sanction or remedial procedure which may be available. The criminal or civil penalty, and the limitation on the amount of the penalty, does not include any amounts that may be recovered for reimbursement. Sums recovered for reimbursement shall be in addition to the penalty.

(Ord. 117441 § 13, 1994: Ord. 116419 § 26, 1992: Ord. 114723
§ 20, 1989: Ord. 113502 § 7, 1987: Ord. 96003 § 11, 1967.)

SMC 21.36.922 Civil infractions.

A. The violation of or failure to comply with any section of this chapter identified in this section is designated as a civil infraction and shall be processed as

contemplated by RCW Chapter 7.80.

B. The violation of or failure to comply with the following section shall be a civil infraction and subject as a Class 1 civil infraction under RCW 7.80.120 to a maximum monetary penalty and default amount of Two Hundred Fifty Dollars (\$250.00), not including statutory assessments:

SMC Section 21.36.420 (Unlawful dumping of solid waste)

C. The violation of or failure to comply with any of the following sections shall be a civil infraction and subject as a Class 3 civil infraction under RCW 7.80.120 to a maximum monetary penalty and default amount of Fifty Dollars (\$50.00), not including statutory assessments:

SMC Section 21.36.044 (Containers required -
Nonresidential)

SMC Section 21.36.410 (Littering)

SMC Section 21.36.425 (Accumulation of solid waste)

SMC Section 21.36.430 (Unlawful use of City litter
receptacles)

SMC Section 21.36.440 (Unlawful use of solid waste
container on private property)

D. For purposes of RCW 7.80.040, the "enforcement officers" authorized to enforce the provisions of the Solid Waste Code are: (1) the Director of Seattle Public Utilities; (2) authorized representatives, assistants or designees of the Director of Seattle Public Utilities; and (3) commissioned officers of the Seattle Police Department and persons issued nonuniformed special police officer commissions by the Chief of Police with authority to enforce such provisions.

E. An action for a civil infraction shall be processed in the manner contemplated by RCW Chapter 7.80.

F. The City Attorney is authorized for and on behalf of The City of Seattle to initiate legal action to enforce this chapter as deemed necessary and appropriate.

(Ord. 118396 § 156, 1996: Ord. 117441 § 1, 1994.)

SMC 21.36.924 Each day a separate violation.

For a continuing violation, each day a person shall continue to violate or fail to comply with a provision of this chapter shall be deemed and considered a separate violation.

(Ord. 117441 § 2, 1994.)

SMC 21.36.965 Identification.

Whenever solid waste deposited, thrown, placed, or kept in violation of Section 21.36.420 or Section 21.36.425 contains three (3) or more items bearing the name of one (1) individual, or whenever a motor vehicle or trailer used in the activity is identified by its license plate, it shall be presumed that the individual whose name appears on the items or to whom the vehicle or trailer is registered committed the unlawful act. The defendant shall have an opportunity to rebut the presumption and may show, for example, as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the wilful act, neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary labor, inability to gain access to the subject property, or other condition or circumstances beyond the control of the defendant. (Ord. 116419 § 31, 1992.)

SMC 21.36.970 Summary abatement.

A. The City Council may, after a report has been filed by the enforcing authority and the property owner, tenant or other person responsible for the condition has had an opportunity to be heard, by ordinance require such person to abate a nuisance by removal and proper disposal of solid waste from the property at such person's cost and expense within a time specified in the ordinance; and if the removal and disposal is not accomplished within the time specified, the enforcing authority may abate the nuisance and recover the cost and expense thereof plus fifteen percent (15%) in a civil action.

B. The enforcing authority may also seek relief in Superior Court to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this chapter when the civil or criminal remedies provided herein are inadequate to effect compliance.

C. The procedures set forth herein are not exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances, abating nuisances, imposing penalties, or taking other legal action.

(Ord. 117441 § 14, 1994: Ord. 116419 § 32, 1992: Ord. 113502 § 8(part), 1987.)

SMC 21.36.975 Reimbursement for City expenses.

Whenever it furthers the safety or convenience of the public, the Director of Seattle Public Utilities may remove obstructions, hazards or nuisances composed of solid waste from public places, and anyone causing the obstruction, hazard or nuisance shall be responsible for reimbursing the City for the expense of removing the same and cleaning the public place together with a charge equal to fifteen percent (15%) of the City's costs to cover administrative expenses and together with the costs of collection and interest.

(Ord. 118396 § 157, 1996: Ord. 117441 § 3, 1994.)

SMC 21.36.980 Crediting of reimbursement to Solid Waste Fund.

All sums received by the City in reimbursement for the Seattle Public Utilities' costs, expenses or charges relating to removal of solid waste or cleaning of property pursuant to any section of this chapter shall be credited to the Solid Waste Fund.

(Ord. 118396 § 158, 1996: Ord. 117441 § 4, 1994.)

SMC Chapter 14.04 Fair Employment Practices

Sections

Subchapter I General Provisions

- 14.04.010 Short title.
- 14.04.020 Declaration of policy.
- 14.04.030 Definitions.

Subchapter II Unfair Employment Practices and Exclusions

- 14.04.040 Unfair unemployment practices designated.
- 14.04.050 Exclusions from unfair practices.

Subchapter III Administration and Enforcement

- 14.04.060 Powers and duties of Department.
- 14.04.070 Powers and duties of Commission.
- 14.04.080 Charge filing.
- 14.04.090 Charge-Time for filing.
- 14.04.100 Charge-Amendments.
- 14.04.110 Charge-Notice and investigation.
- 14.04.120 Findings of fact and determination of reasonable cause or no reasonable cause.
- 14.04.130 Determination of no reasonable cause-Appeal from and dismissal.
- 14.04.140 Determination of reasonable cause-Conciliation and settlement of cases involving all respondents except City departments.
- 14.04.150 Determinations of reasonable cause-Conciliation, settlement and conclusion of cases involving City departments as respondents.
- 14.04.160 Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.
- 14.04.170 Complaint and hearing of cases with all respondents except City departments.
- 14.04.180 Decision and order.
- 14.04.190 Construction with other laws.
- 14.04.200 Cooperative agreements.
- 14.04.210 Violation-Penalty.
- 14.04.220 Application to pending charges and complaints.

Statutory Reference: For comparable statutory provisions on employment discrimination, see RCW 49.44.090, 49.60.180 through 49.60.200, 43.01.100 and 28A.400.310.

Severability: If any clause, sentence, paragraph, or part of this chapter, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this chapter.

(Ord. 109116 § 19, 1980.)

Editor's Note:

1. Ord. 109116 became effective July 17, 1980.
2. The marital status anti-discrimination provisions of SMC Chapters 14.04 and 14.08 applicable to employee health insurance issues have been suspended until March 1, 1990; the City is awaiting a response from the U.S. Commissioner of Internal Revenue on certain questions regarding the income tax implications of compliance with such provisions.

Subchapter I General Provisions

SMC 14.04.010 Short title.

This chapter shall constitute the "Seattle Fair Employment Practices Ordinance" and may be cited as such.

(Ord. 109116 § 1, 1980.)

Seattle fair employment practices ordinance was a valid exercise of City power and was not preempted by or in conflict with state law against discrimination. *Seattle Newspaper-Web, Etc. v. City of Seattle*, 24 Wn. App. 462, 604 P.2d 170 (1979).

SMC 14.04.020 Declaration of policy.

A. It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical disability. The role of the Office for Civil Rights is to enforce the provisions of this chapter in furtherance of this policy.

B. This chapter shall not be construed to endorse specific beliefs, practices or lifestyles.

C. The provisions of this chapter shall apply to both private employers and the City, and shall be liberally construed for accomplishment of its policies and purposes; provided that nothing in this chapter shall be construed so as to infringe upon the authority vested in the Civil Service Commission, the Public Safety Civil Service Commission, and City Departments by the City Charter.

D. Nothing in this chapter shall be deemed to deny any person the right to institute any action or to pursue any civil or criminal remedy for the violation of such person's civil rights.

E. To avoid duplication of efforts or otherwise conserve agency resources, the Director may suspend or close a case for any reason consistent with this chapter, including the reason that the case is being actively pursued in another forum.

F. Remedies under this chapter should include such relief authorized by law as may be appropriate and reasonable to make the aggrieved person whole and eliminate the unfair practice.

G. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from or by reason of any act or omission in connection with the implementation or enforcement of this chapter on the part of the City by its officers, employees or agents.

(Ord. 118392 § 23, 1996; Ord. 112903 § 1, 1986; Ord. 109116 § 2, 1980.)

SMC 14.04.030 Definitions.

When used in this chapter, unless the context otherwise requires:

A. "Charging party" means the person aggrieved by an alleged unfair employment practice or the person making a charge on

another person's behalf, or the Director when the Director files a charge.

B. "City department" means any agency, office, board or commission of the City, or any Department employee acting on its behalf, but shall not mean a public corporation chartered under Ordinance 103387, or its successor ordinances, or any contractor, consultant, concessionaire or lessee.

C. "Commission" means the Seattle Human Rights Commission.

D. "Department" means the Office for Civil Rights of the City.

E. "Director" means the Director of the Office for Civil Rights.

F. "Discrimination," "discriminate," and/or "discriminatory act" means any act, by itself or as part of a practice, which is intended to or results in different treatment or differentiates between or among individuals or groups of individuals by reason of race, color, age, sex, marital status, sexual orientation, political ideology, creed, religion, ancestry, national origin; or the presence of any sensory, mental or physical handicap.

G. "Employee" means any person employed by an employer.

H. "Employer" means any person who has four (4) or more employees, or the employer's designee or any person acting in the interest of such employer.

I. "Employment agency" means any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place individuals with an employer or in employment.

J. "Labor organization" means any organization or employee group or association in which employees participate and which exists for the purpose of (1) collective bargaining for or on behalf of employees, (2) dealing with employers concerning grievances, labor disputes, terms or conditions of employment, or (3) other mutual aid or protection of such employees in relation to their employment.

K. "Marital status" means the presence or absence of a marital relationship and includes the status of married, separated, divorced, engaged, widowed, single or cohabitating.

L. "Party" includes the person charging or making a complaint or upon whose behalf a complaint is made alleging an unfair employment practice, the person alleged or found to have committed an unfair employment practice and the Office for Civil Rights.

M. "Person" includes one (1) or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, public corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent or employee, whether one (1) or more natural persons, and further includes any department, office, agency or instrumentality of the City.

N. "Political ideology" means any idea or belief, or coordinated body of ideas or beliefs, relating to the purpose, conduct, organization, function or basis of government and related institutions and activities, whether or not characteristic of any political party or group. This term includes membership in a political party or group and includes conduct, reasonably related to political ideology, which does not interfere with job performance.

O. "Respondent" means any person who is alleged or found to have committed an unfair employment practice prohibited by this chapter.

P. "Sexual orientation" means actual or perceived male or female heterosexuality, bisexuality, homosexuality, transsexuality, or transvestism and includes a person's attitudes, preferences, beliefs and practices pertaining thereto.

(Ord. 11892 § 24, 1996; Ord. 112903 § 2, 1986; Ord. 109116 § 3, 1980.)

1. Editor's Note: Ordinance 103387 is codified in Chapter 3.110 of this Code.

Subchapter II Unfair Employment Practices and Exclusions

SMC 14.04.040 Unfair employment practices designated.

It is unfair employment practice within the City for any:

A. Employer to discriminate against any person with respect to hiring, tenure, promotion, terms, conditions, wages or privileges of employment, or with respect to any matter related to employment;

B. Employer, employment agency, or labor organization to discriminate by establishing, announcing or following a policy of denying or limiting employment or membership opportunities to any person;

C. Employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to use any form of application therefor, which indicates any preference, limitation, specification, or discrimination based upon race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap; provided that nothing in this chapter shall prevent an employer from ascertaining and recording data as to race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap whether before or after employment, for the purpose of making reports specifically required by agencies of federal, state or local government for the purpose of eliminating and preventing discrimination or overcoming its effects, or for other purposes authorized by law or the rules and regulations of Washington State Human Rights Commission, the Equal Employment Opportunities Commission or the Department;

D. Employment agency to discriminate against any person with respect to any reference for employment, assignment as to job classification or otherwise;

E. Labor organization to discriminate against any person by limiting, segregating, or classifying its membership in any way that would:

1. Deprive or tend to deprive any person of employment opportunities,

2. Limit any person's employment opportunities or otherwise adversely affect such person's status as an applicant for employment or as an employee,

3. Adversely affect the wages, hours, or conditions of employment of any person;

F. Employer, employment agency, or labor organization to penalize or discriminate in any manner against any person because they opposed any practice forbidden by this chapter or because they made a charge, testified or assisted in any manner in any investigation, proceeding, or hearing initiated under the provisions of this chapter;

G. Employer, employment agency, labor organization, or any joint labor-management committee controlling apprenticeship or other training or retraining programs to discriminate against any person with respect to admission to or participation in any guidance program, apprenticeship training program or other occupational training program;

H. Publisher, firm, corporation, organization, or association printing, publishing or circulating any newspaper, magazine or other written publication, to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of Section 14.04.040 C, or to segregate and separately designate advertisements as applying only to men or women unless such designation is a bona fide occupational qualification reasonably necessary to the particular business or employment;

I. Person to:

1. Knowingly and wilfully aid, abet, initiate, compel, or

coerce the doing of any act declared in this chapter to be an unfair employment practice; provided that this subparagraph shall have no application to any act declared to be an unfair employment practice under subsection H of this section,

2. Obstruct or prevent any person from complying with the provisions of this chapter,

3. Attempt directly or indirectly to commit any act declared by this section to be an unfair employment practice.

(Ord. 109116 § 4, 1980.)

SMC 14.04.050 Exclusions from unfair practices.

A. Notwithstanding any other provision of Section 14.04.040, it is not an unfair employment practice under this chapter for an employer, employment agency, or labor organization to discriminate in those instances where religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

B. Notwithstanding any other provisions of this chapter, it is not an unfair employment practice under this chapter to act to accomplish the purposes and goals of the affirmative action plan of an employer, employment agency, or labor organization.

C. The provisions of Section 14.04.040 insofar as they declare discrimination on the basis of age to be an unfair employment practice shall not be applicable with respect to individuals who are under forty (40) years of age.

D. The provisions of Section 14.04.040 insofar as they declare discrimination on the basis of the presence of any sensory, mental or physical handicap to be an unfair employment practice, shall not apply if the particular disability prevents the proper performance of the particular worker involved.

E. Nothing in this chapter shall be construed to protect criminal conduct.

F. Notwithstanding any provision of Sections 14.04.030 and 14.04.040, it is not an unfair practice under this chapter for an employer, with a demonstrated security or public safety need, to discriminate on the basis of participation in activities which involve the use of force or violence or advocate or incite force or violence.

(Ord. 118392 § 25, 1996; Ord. 112903 § 3, 1986; Ord. 109116 § 5, 1980.)

Subchapter III Administration and Enforcement

SMC 14.04.060 Powers and duties of Department.

A. The Office for Civil Rights shall receive, investigate, and pass upon charges alleging unfair practices as defined by this chapter, conciliate and settle the same by agreement, and monitor and enforce any agreements or orders resulting therefrom or from a subsequent hearing thereon under and pursuant to the terms of this chapter; and shall have such powers and duties in the performance of these functions as are defined in this chapter and otherwise necessary and proper in the performance of the same and provided for by law. The Department shall further assist the Commission and other City agencies and departments upon request in effectuating and promoting the purposes of this chapter.

B. The Director is authorized and directed to promulgate rules consistent with this chapter and the Administrative Code.<1>

(Ord. 118392 § 26, 1996; Ord. 109116 § 6(A), 1980.)

1. Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

SMC 14.04.070 Powers and duties of Commission.

The Seattle Human Rights Commission shall study, advise, and make recommendations for legislation on policies, procedures, and practices which would further the purposes of this chapter. The Commission shall hear appeals from the Director's determinations of no reasonable cause and, in cases involving respondents who are City departments, hear appeals from determinations of reasonable cause and the orders relating to the remedy therefor. It shall, where appropriate and necessary, in its judgment, hear and determine complaints jointly with the Hearing Examiner as provided in Sections 14.04.170 and 14.04.180. The Commission shall have such powers and authority in carrying out these functions as are provided for by this chapter or otherwise established by law.

(Ord. 109116 § 6(B), 1980.)

SMC 14.04.080 Charge filing.

A. A charge alleging an unfair employment practice shall be in writing on a form or in a format determined by the Department, and signed under oath or affirmation by or on behalf of a charging party before the Director, one of the Department's employees, or any other person authorized to administer oaths, and shall describe the unfair employment practice complained of and should include a statement of the dates, places and circumstances and the persons responsible for such acts and practices.

B. Whenever charges are made by or on behalf of a person claiming to be aggrieved, the person making the charge must provide the Director with the name, address and telephone number of the individual on whose behalf the charge is made. Thereafter, the Director shall verify the authorization of such charge by the person on whose behalf the charge is made and upon the request of such person may keep his or her identity confidential.

C. A charge shall not be rejected as insufficient because of failure to include all required information so long as it substantially satisfies the informational requirements necessary for processing.

D. A charge alleging an unfair employment practice or pattern of unfair practices may also be filed by the Director whenever the Director has reason to believe that any person has been engaged or is engaging in an unfair employment practice.

(Ord. 118392 § 27, 1996; Ord. 109116 § 7(A), 1980.)

SMC 14.04.090 Charge-Time for filing.

Charges filed under this chapter must be filed within one hundred eighty (180) days after the occurrence of the alleged unfair employment practice with the Office for Civil Rights.

(Ord. 118392 § 28, 1996; Ord. 109116 § 7(B), 1980.)

SMC 14.04.100 Charge-Amendments.

The charging party or the Department may amend a charge to cure technical defects or omissions; or to clarify and amplify allegations made therein; or to add allegations related to or arising out of the subject matter set forth, or attempted to be set forth, in the original charge. For jurisdictional purposes, such amendments shall relate back to the date the original charge was first filed. The charging party may also amend a charge to include allegations of additional unrelated discriminatory acts and/or retaliation which arose after filing of the original

charge. The amendment must be filed within one hundred eighty (180) days after the occurrence of the additional discriminatory act and/or retaliation and prior to the Department's issuance of findings of fact and a determination with respect to the original charge. Such amendments may be made at any time during the investigation of the original charge so long as the Department will have adequate time to investigate such additional allegations and the parties will have adequate time to present the Department with evidence concerning such allegations before the issuance of findings of fact and a determination.

(Ord. 118392 § 29, 1996; Ord. 112903 § 4, 1986; Ord. 109116 § 7(C), 1980.)

SMC 14.04.110 Charge-Notice and investigation.

A. The Director shall cause to be served or mailed by certified mail, return receipt requested, a copy of the charge on the respondent within twenty (20) days after the filing of the charge and shall promptly make an investigation thereof.

B. The investigation shall be directed to ascertain the facts concerning the unfair practice alleged in the charge, and shall be conducted in an objective and impartial manner.

C. During the investigation the Director shall consider any statement of position or evidence with respect to the allegations of the charge which the charging party or the respondent wishes to submit. The Director shall have authority to sign and issue subpoenas requiring the attendance and testimony of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, and access to evidence for the purpose of examination and copying, and conduct discovery procedures which may include the taking of interrogatories and oral depositions.

D. The Director may require a fact finding conference or participation in another process with the respondent and any of respondent's agents and witnesses and charging party during the investigation in order to define the issues, determine which elements are undisputed, resolve those issues which can be resolved, and afford an opportunity to discuss or negotiate settlement. Parties may have their legal counsel present if desired.

(Ord. 118392 § 30, 1996; Ord. 109116 § 8, 1980.)

SMC 14.04.120 Findings of fact and determination of reasonable cause or no reasonable cause.

A. The results of the investigation shall be reduced to written findings of fact and a determination shall be made by the Director that there is or is not reasonable cause for believing that an unfair practice has been or is being committed, which determination shall also be in writing and issued with the written findings of fact. Where a City department is a respondent the Director shall issue such findings and determination only after having submitted proposed findings and determinations to the respondent and charging party for review and comment. With respect to the findings and determination, "issued" shall be defined as signed and dated by the Director.

B. The findings of fact and determination shall be furnished promptly to the respondent and charging party.

C. Once issued to the parties, the Director's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or in response to an order by the Human Rights Commission after an appeal taken pursuant to Section 14.04.130 or 14.04.160; provided, that the

Director may correct clerical mistakes or errors arising from oversight or omission upon a motion from a party or upon the Director's own motion.

(Ord. 118392 § 31, 1996; Ord. 112903 § 5, 1986; Ord. 109116 § 9, 1980.)

SMC 14.04.130 Determination of no reasonable cause-Appeal from and dismissal.

If a determination is made that there is no reasonable cause for believing an unfair employment practice under this chapter has been committed, the charging party shall have the right to appeal such determination to the Commission within thirty (30) days of the date the determination is signed by the Director by filing a written statement of appeal with the Commission. The Commission shall promptly deliver a copy of the statement to the Department and respondent and shall promptly consider and act upon such appeal by either affirming the Director's determination or remanding it to the Director with appropriate instructions. In the event no appeal is taken or such appeal results in affirmance, the determination of the Director shall be final and the charge deemed dismissed and the same shall be entered on the records of the Department.

(Ord. 118392 § 32, 1996; Ord. 109116 § 10, 1980.)

SMC 14.04.140 Determination of reasonable cause-Conciliation and settlement of cases involving all respondents except City departments.

A. In all cases except a case in which a City department is the respondent, if a determination is made that reasonable cause exists to believe that an unfair practice has occurred, the Director shall endeavor to eliminate the unfair practice by conference, conciliation and persuasion. Conditions of settlement may include (but are not limited to) the elimination of the unfair employment practice, hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, admittance to participation in a guidance, apprentice training or retraining program or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Any settlement agreement shall be reduced to writing and signed by the Director and the respondent. An order shall then be entered by the Director setting forth the terms of the agreement. Copies of such order shall be delivered to all affected parties.

B. In case of failure to reach an agreement and of conciliation and upon a written finding to that effect furnished to the charging party and respondent, except a case in which a City department is a respondent, the Director shall promptly cause to be delivered the entire investigatory file, including the charge and any and all findings made, to the City Attorney for further proceedings and hearing under this chapter pursuant to Section 14.04.170.

(Ord. 117615 1, 1995; Ord. 112903 7, 1986; Ord. 109116 11, 1980.)

SMC 14.04.150 Determinations of reasonable cause-Conciliation, settlement and conclusion of cases involving City departments as respondents.

In all cases in which a City department is a respondent:

A. A determination of reasonable cause by the Director shall be deemed a finding that an unfair employment practice has been committed by respondent and is dispositive of this issue for all future proceedings under this chapter, unless appealed, reversed and remanded as provided in this chapter.

B. Within sixty (60) days of a determination of reasonable cause, the Director shall confer with the parties and determine an appropriate remedy, which remedy may include (but is not limited to) hiring, reinstatement or upgrading with or without back pay, lost benefits, attorney's fees, admittance to participation in a guidance, apprentice training or retraining program, or such other action as will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Such remedy shall be reduced to writing in an order of the Director.

C. The charging party must sign a release in the form and manner requested by the Department, releasing the City from further liability for acts giving rise to the charge in order to obtain the benefits of the remedy provided under this section and before payment can be made. Without such release, the Director's order with respect to the charging party's individual relief shall have no force and effect. In such event the Director shall notify the parties involved in writing.

D. In all cases where the remedy determined by the Director before or after any appeal includes a monetary payment which exceeds the sum of Five Thousand Dollars (\$5,000.00), the charge or claim, the Director's determination, order, the charging party's signed release and such further documentation as may be required shall be presented to the City Council for passage by separate ordinance. If the City Council fails or refuses to appropriate the amount ordered by the Director within ninety (90) days, the Director shall certify the case to the Hearing Examiner for a hearing to determine the appropriate monetary relief in the case which determination shall be final and binding upon the City.

E. Where the Director's order includes a monetary payment of Five Thousand Dollars (\$5,000.00) or less, such payment shall be made under the authority and in the form and manner otherwise provided for by law for payment of such claims.

(Ord. 117615 2, 1995; Ord. 112903 7, 1986; Ord. 109116 12, 1980.)

SMC 14.04.160 Appeals to the Commission from determinations of reasonable cause and orders of excess involving City departments as respondents.

In all cases in which a City department is a respondent:

A. The charging party or respondent may appeal the Director's order and determination of reasonable cause to the Commission within thirty (30) days of the Director's order by filing a written statement of appeal with the Commission. Such statement shall state specifically the grounds on which it is based and the reasons the determination or order or both is in error.

B. The Commission shall promptly mail a copy of the statement to the Department and to the other party and shall promptly consider and act upon such appeal by either affirming the Director's determination or order or remanding it to the Director with appropriate instructions.

C. The filing of an appeal shall stay the enforcement of any remedy provided for in the Director's determination or order during the pendency of the appeal.

D. In such appeal, the Commission shall consider only the record submitted to it by the Department and written statements of positions by the parties involved and, in its discretion, oral presentation. The Commission shall reverse the Director's

determination or order only upon a finding that it is clearly erroneous.

(Ord. 117615 3, 1995; Ord. 109116 13, 1980.)

SMC 14.04.170 Complaint and hearing of cases with all respondents except City departments.

A. Following submission of the investigatory file from the Director in cases involving all respondents under Section 14.04.140, the City Attorney shall prepare a complaint against such respondent relating to the charge and facts discovered during the investigation thereof and prosecute the same in the name and on behalf of the Department and the City at a hearing therefor before the Hearing Examiner sitting alone or with representatives of the Commission as provided in this chapter and to appear for and represent the interests of the Department and the City at all subsequent proceedings; provided, if the City Attorney determines that there is no legal basis for a complaint to be filed or for proceedings to continue, a statement of the reasons therefor shall be filed with the Department, charging party and the respondent.

B. The complaint shall be served on respondent in the usual manner provided by law for service of complaints and filed with the Seattle Hearing Examiner. A copy of such complaint shall be furnished charging party.

C. Within twenty (20) days of the service of such complaint upon it, the respondent shall file its answer with the Hearing Examiner and serve a copy of the same on the City Attorney.

D. Upon the filing of the complaint, the Hearing Examiner shall promptly establish a date for the hearing of such complaint and give notice thereof to the Commission, the City Attorney and respondent, and shall thereafter hold a public hearing on the complaint, which hearing shall commence no earlier than ninety (90) days nor later than one hundred twenty (120) days from the filing of the complaint, unless otherwise ordered by the Hearing Examiner.

E. After the filing of a complaint with the Hearing Examiner, it may be amended only with the permission of the Hearing Examiner, which permission shall be granted when justice will be served thereby and all parties are allowed time to prepare their case with respect to additional or expanded charges which they did not and could not have reasonably foreseen would be in issue at the hearing.

F. The hearing shall be conducted by a Hearing Examiner from the Office of Hearing Examiner, or a hearing examiner pro tempore appointed by the Hearing Examiner from a list approved by the Commission, sitting alone or with representatives of the Commission if any are designated. Such hearings shall be conducted in accordance with written rules and procedures consistent with this ordinance and the Administrative Code of the City (Ordinance 102228).<1>

G. The Commission, within thirty (30) days after notice of the date of hearing from the Hearing Examiner, at its discretion, may appoint two (2) of its members who have not otherwise been involved in the charge, investigation, fact finding, or other resolution and proceeding on the merits of the case, who have not formed an opinion on the merits of the case, and who otherwise have no pecuniary, private or personal interest or bias in the matter, to hear the case with the Hearing Examiner. If the Commission has designated representatives they shall each have an equal vote with the Hearing Examiner, except the Hearing Examiner shall be the chairperson of the panel and make all evidentiary rulings. Should a question arise as to previous involvement, interest or bias of an appointed Commissioner, the Hearing Examiner shall resolve the issue in conformance with the law on the subject.

(Ord. 109116 § 14, 1980.)

1. Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

SMC 14.04.180 Decision and order.

A. Within thirty (30) days after conclusion of the hearing, the Hearing Examiner presiding at the hearing (or the Examiner and Commissioners as the case may be) shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Department.

B. Such decision shall contain a brief summary of the evidence considered and shall contain findings of fact, conclusions of law upon which the decision is based, and an order detailing the relief deemed appropriate, together with a brief statement of the reasons therefor.

C. In the event the Hearing Examiner (or a majority of the panel composed of the Examiner and Commissioners), determines that a respondent has committed an unfair employment practice under this chapter, the Hearing Examiner (or panel majority) may order the respondent to take such affirmative action or provide for such relief as is deemed necessary to correct the practice, effectuate the purpose of this chapter, and secure compliance therewith, including but not limited to hiring, reinstatement, or upgrading with or without back pay, lost benefits, attorney's fees, admittance or restoration to membership in a labor organization, admittance to participation in a guidance, apprentice training or retraining program, or such other action which will effectuate the purposes of this chapter, including action which could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed Ten Thousand Dollars (\$10,000.00). Back pay liability shall not accrue from a date more than two (2) years prior to the initial filing of the charge.

D. Respondent shall comply with the provisions of any order affording relief and shall furnish proof of compliance to the Department as specified in the order. In the event respondent refuses or fails to comply with the order, the Director shall notify the City Attorney of the same and the City Attorney shall invoke the aid of the appropriate court to secure enforcement or compliance with the order.

(Ord. 117615 4, 1995; Ord. 112903 8, 1986; Ord. 109116 15, 1980.)

SMC 14.04.190 Construction with other laws.

Nothing in this chapter shall be construed to invalidate or restrict or deny any right or remedy any person may have under state or federal law or preclude any cause of action in court otherwise provided for the violation of any person's civil rights; nor shall this chapter be construed to preclude any person aggrieved from seeking judicial review of any final administrative decision or order made under this chapter affecting such person.

(Ord. 109116 § 16, 1980.)

SMC 14.04.200 Cooperative agreements.

Nothing in this chapter shall be interpreted to prevent the receiving, referring, or other processing of complaints, in accordance with a cooperative agreement with the Washington State Human Rights Commission, the Equal Employment Opportunity Commission or with other agencies concerned with

the enforcement of laws against discrimination.
(Ord. 109116 § 17, 1980.)

SMC 14.04.210 Violation-Penalty.

It is unlawful for any person to wilfully engage in an unfair practice under this chapter or wilfully resist, prevent, impede or interfere with the Director or Hearing Examiner in the performance of their duties under this chapter, or to fail, refuse, or neglect to comply with any lawful order of the Director or Hearing Examiner. Conduct made unlawful by this section constitutes a violation subject to the provisions of Chapter 12A.01 and Chapter 12A.02 of the Seattle Criminal Code

(Ordinance 102843, as amended), <1> and any person convicted thereof may be punished by a civil fine or forfeiture not to exceed Five Hundred Dollars (\$500.00).

(Ord. 109116 § 18, 1980.)

1. Editor's Note: Chapter 12A.01 of the Criminal Code is codified in Chapter 12A.02 of this Code; Chapter 12A.02 is codified in Chapter 12A.04 of this Code.

SMC 14.04.220 Application to pending charges and complaints.

The procedures for administration and enforcement under this chapter shall apply to charges pending which have not had a date certain set for hearing as of the effective date of this ordinance. <1> However, this section shall not be construed to invalidate any administrative action taken or determinations and orders made on pending charges because of the procedures provided by this chapter.

(Ord. 109116 § 20, 1980.)

SMC Chapter 20.44 City Contracts-Prevention Of Discrimination

Sections

Subchapter I Regulations

- 20.44.010 Definitions.
- 20.44.020 Powers and duties of the Director.
- 20.44.030 Franchises, consultant, public improvement and services contracts.
- 20.44.040 Lease and concession contracts.
- 20.44.050 Supplies, materials and equipment contracts.
- 20.44.060 Substitute provisions.
- 20.44.070 Sworn statement.
- 20.44.080 Notice of contracts awarded.
- 20.44.090 Assistance to contractors.
- 20.44.100 Employment goals, ranges, or ratios.
- 20.44.110 Procedures when compliance with special goals is unsatisfactory.
- 20.44.120 Transition period for pre-qualification.

Statutory Reference: For state law against discrimination, see RCW Ch. 49.60.

Editor's Note: For further provisions regarding prevention of discrimination, see Title 14 of this Code.

SMC 20.44.010 Definitions.

As used in this subchapter:

- A. "Bona fide occupational qualification" means a job qualification which is essential to the accomplishment of the purposes for which the person is hired.
- B. "Commission" means the Human Rights Commission of the City.
- C. "Consultant contracts" means contracts for expert and temporary personal services, but does not include contracts for services in connection with anticipated or pending litigation in which the City is involved.
- D. "Contract" shall have its ordinary and usual meaning, but shall not include agreements made with other governmental agencies, associations of governmental agencies or officials, or with particular officers or employees of such agencies for services related to their official position or employment.
- E. "Contracting authority" means the City officer or board authorized to enter into contracts on behalf of the City.
- F. "Director" means the Executive Services Director (ESD) or his/her designee.
- G. "Protected classes" means persons or groups of persons who may be discriminated against because of race, color, sex or the presence of any sensory, mental or physical handicap, and includes but is not limited to women, Blacks, Asians (Japanese, Chinese, Filipino, Korean, Samoan), Native Americans, Aleuts, and Hispanics (Spanish Americans, Mexican Americans, Chicanos, Puerto Ricans) and other ethnic minority persons.
- H. "Services" shall have its ordinary and usual meaning, but shall not include subscription services or services related to anticipated or pending litigation in which the City is involved.
- I. "Vendor" means a contractor who has a contract with the City for supplies, materials or equipment.

(Ord. 118397 § 105, 1996; Ord. 117407 § 8, 1994; Ord. 109808

§ 1, 1981; Ord. 101432 § 1, 1972.)

SMC 20.44.020 Powers and duties of the Director.

The Director shall have the power and duty to:

A. Assist all City contracting authorities in preparing equal opportunity and anti-discrimination provisions for contract specifications, advise as to the compliance records of prospective contractors, and report findings as to discriminatory practices and employment guidelines recommended by the Human Rights Commission and established by pertinent ordinances, state or federal laws or regulations pertaining to equal opportunity affecting prospective contracts;

B. Recommend to City contracting authorities the content of contract specifications requiring affirmative action to assure equality of employment opportunity, including but not limited to minimum employment goals and ranges of ratios for members of a protected class;

C. Perform the duties prescribed in this subchapter, including adopting, rescinding, and amending suitable rules and regulations to implement this subchapter, reviewing sworn statements and proposed affirmative action programs, making investigations, assisting contractors, and evaluating contractor compliance and assisting contracting authorities to meet the requirements of this subchapter;

D. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this subchapter.

(Ord. 109808 § 2, 1981; Ord. 101432 § 2, 1972.)

SMC 20.44.030 Franchises, consultant, public improvement and services contracts.

All consultant contracts, franchises, and contracts for public improvements, or services, the estimated cost of which exceeds One Thousand Dollars (\$1,000.00), shall contain the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"The contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"The contractor will, prior to commencement and during the term of this contract, furnish to the Executive Services Director (as used herein Director means the Executive Services Director or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by the contractor in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision.

"If upon investigation the Director finds probable cause to believe that the contractor has failed to comply with any of the terms of these provisions, the contractor and the contracting authority shall be so notified in writing. The contracting authority shall give the contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the contract and/or withhold any funds due or to become due to the contractor, pending compliance by the contractor with the terms of these provisions.

"Failure to comply with any of the terms of these provisions shall be a material breach of this contract.

"The foregoing provisions will be inserted in all subcontracts for work covered by this contract."

(Ord. 118397 § 106, 1996: Ord. 117407 § 9, 1994: Ord. 109808 § 3, 1981: Ord. 101432 § 3.1, 1972.)

SMC 20.44.040 Lease and concession contracts.

A. All contracts of the City for leases and concessions shall contain the following provisions:

"The lessee (contractor) agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap."

B. All contracts of the City for leases and concessions of seven (7) consecutive days' duration or longer and involving employers with three (3) or more employees shall contain the following provisions:

"During the performance of this contract, the lessee (contractor) agrees as follows:

"The lessee (contractor) will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The lessee (contractor) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee (contractor) agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The lessee (contractor) will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions;

provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"Lessee (contractor) will, upon the request of the Director (as used herein Director means the Executive Services Director, or his/her designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the lessee (contractor) in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the Director determines that there is probable cause to believe that the lessee (contractor) has failed to comply with any of the terms of these provisions, the lessee (contractor) shall be so notified in writing. The contracting authority shall give the lessee (contractor) an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend or terminate this lease (contract) and evict lessee (terminate the contract) in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this lease (contract).

"The foregoing provisions will be inserted in all subleases (subcontracts) entered into under this lease (contract)."

(Ord. 118397 § 107, 1996: Ord. 117407 § 10, 1994: Ord. 109808 § 4, 1981: Ord. 101432 § 3.2, 1972.)

SMC 20.44.050 Supplies, materials and equipment contracts.

A. All contracts of the City for the purchase of supplies, materials, or equipment shall contain the following provisions:

"During the performance of this contract, the vendor agrees as follows:

"The vendor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause."

B. Before any City contracting authority accepts any bid or enters into any contract for the purchase of supplies, materials, or equipment the vendor shall be pre-qualified to do business with the City as provided for in this section, provided that the contracting authority may waive the requirement of pre-qualification whenever it finds and certifies after investigation that:

1. Needed supplies, materials or equipment are available only from a single source and that the vendor has failed to comply with the requirements for pre-qualification; or

2. An emergency exists which requires the immediate purchase of supplies, materials, or equipment and for which the contracting authority is authorized to secure the supplies, materials, or equipment in the open market, without advertisement, at the lowest obtainable price, and that the vendor of the supplies, materials, or equipment is not currently disqualified from doing business with the City by reason of its removal from pre-qualified status or its failure to satisfy the pre-qualification requirements pursuant to its application for pre-qualification.

C. City contracting authorities purchasing supplies, materials, or equipment shall cause notice of this pre-qualifying requirement to be included in all invitations to bid and to be conspicuously displayed in all offices purchasing supplies, materials, or equipment for the City.

D. A vendor shall be deemed to be pre-qualified when the contracting authority, with the advice and recommendations of the Director, finds that:

1. The vendor is complying with federal, state, and local laws regarding discrimination;

2. The vendor has satisfactorily completed and filed with the Director on such form as the Director provides therefor, the following information:

a. An employment profile which may include the number of employees, their protected class status, and the type of work each performs by general categories, and such other information as requested by the Director, and

b. A sworn statement as set out in Section 20.44.070 which shall become terms and conditions of any and all contracts of the vendor with the City for the purchase of supplies, materials, or equipment.

E. A contracting authority may assume that a vendor has satisfied the requirements for pre-qualifying if the Director does not notify the contracting authority to the contrary within three (3) working days of the submission to the Director by the vendor of all information and sworn statements required to pre-qualify.

F. Whenever the contracting authority, with the advice of the Director, finds that a contractor's sworn statement is in need of review or updating, he/she shall so notify the vendor who shall take steps as necessary to review or update his/her sworn statement to meet the contracting authority's requirements, provided that if changes in the sworn statement would have a substantial financial impact on the contractor with regard to contracts already entered into the changes shall not apply to such contracts.

G. If upon investigation the Director determines that there is probable cause to believe that the vendor has failed to comply with any of the terms of this section or with the obligations of the sworn statement, written findings as to each such probable breach shall be given by the Director to the vendor and the contracting authority. The contracting authority shall give the vendor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may cancel or suspend the vendor's pre-qualification.

(Ord. 109808 § 5, 1981: Ord. 101432 § 3.3, 1972.)

SMC 20.44.060 Substitute provisions.

A City contracting authority may substitute in lieu of the contract provisions set forth in Sections 20.44.030,

20.44.040, and 20.44.050 such anti-discrimination or equal opportunity provisions required or requested by the Executive Services Department, the United States of America or The State of Washington.

(Ord. 118397 § 108, 1996: Ord. 117407 § 11, 1994: Ord. 101432 § 3.4, 1972.)

SMC 20.44.070 Sworn statement.

All City contracts covered by this subchapter except those for the purchase of supplies, materials, or equipment, shall include a sworn statement specifically setting forth what affirmative action the contractor will take to insure equality of opportunity in employment during the term of the contract.

(Ord. 101432 § 4, 1972.)

SMC 20.44.080 Notice of contracts awarded.

As to each City contract of One Thousand Dollars (\$1,000.00) or more, the contracting authority shall furnish to the Director the name of the contractor to whom such contract has been awarded and the dollar amount for which it was awarded. City contracts of less than One Thousand Dollars (\$1,000.00) shall be made available upon request of the Director.

(Ord. 101432 § 5, 1972.)

SMC 20.44.090 Assistance to contractors.

The Director may offer the services and facilities of the Executive Services Department to assist contractors desiring to bid on, or having been awarded a City contract, to comply with the equal opportunity provisions for such contract, and may offer information as to organizations and agencies available to assist such contractor in recruiting, tutoring, training, and/or otherwise preparing potential employees.

(Ord. 118397 § 109, 1996: Ord. 117407 § 12, 1994: Ord. 101432 § 6, 1972.)

SMC 20.44.100 Employment goals, ranges, or ratios.

A. Whenever the Director has certified to any City contracting authority that:

1. Members of protected classes are being denied equal employment opportunity within the City in certain occupations, trades, professions or supervisory types of work included in City contracts due to existing discrimination or the effects of prior discrimination; and

2. Persons who are members of such protected classes are ready, willing and capable of accepting such employment or performing such tasks if the opportunity be available; and

3. Employment goals, ranges, or ratios for employment of such persons who are members of protected classes in such occupations, trades, professions or supervisory types of work or tasks are necessary to assure such persons equality of employment opportunity and to overcome discrimination or the effects of past discrimination and social or institutional inertia; and

4. The goals, ranges or ratios certified reasonably reflect the employment goals, ranges or ratios that would exist under conditions of equal employment opportunity and assure fair, equal and nondiscriminatory treatment of all persons without respect to creed, race, color, sex, or national origin; then specifications for contracts let by any contracting authority and involving the line of work or tasks so certified shall include a provision establishing employment goals, ranges or ratios for persons of such protected classes as certified by the Director and adjusted by the contracting authority, if necessary, to reflect a standard of performance that can be carried out by a contractor proceeding in good faith and making every reasonable effort to comply in all phases of employment, including solicitation, training and apprenticeship, promotion, and treatment of employees. Such provisions shall include provisions relating to enforcement and sanctions for noncompliance.

B. Employment goals may be implemented by or stated as a minimum number, ratio, range or a particular assignment, and may include participation in multi-employer programs for training and/or employment or coordination with state and federal equal opportunity training programs, and shall be designed and used to assure that applicants for employment and employees receive equal employment opportunities and fair, equal and nondiscriminatory treatment.

C. On projects or activities financed with assistance from the United States or The State of Washington, the contracting authority may substitute for such provisions such anti-discrimination or equal employment opportunity provision required or requested by the Executive Services Department, the United States, or the state.

D. City contracting authorities shall, upon making adjustments or when requested by the Director, submit copies of the contracts covered by this section to the Director for recommendations and further suggestions with regard to employment goals for protected classes which should be part of the specifications. Contracts so submitted to the Director may be assumed adequate if not returned within five (5) days with recommendations for improvement. Contracting authorities shall, as to any contract submitted to the Director under this section, notify the Director for the final form of such contract before the date of its award.

E. Certifications by the Director under this section shall be in effect until revoked or revised by the Director and the contracting authority is notified of such revocation or revision.

F. Employment goals established by this section are not intended and shall not be taken to diminish the contractor's responsibility and obligation under other sections of this subchapter. A contractor whom the Executive Services Director has certified to be acting in good faith and making every reasonable effort to comply with the employment goals established shall be deemed in compliance, even though the employment goals are not met.

(Ord. 118397 § 110, 1996; Ord. 117407 § 13, 1994; Ord. 109808 § 6, 1981; Ord. 101432 § 7, 1972.)

SMC 20.44.110 Procedures when compliance with special goals is unsatisfactory.

A. Prior to the completion of any contract which contains provisions establishing employment goals, ranges or ratios, the Director may report to the contracting authority regarding the performance by such contractor. If the Director fails to submit such report, the City contracting authority may assume adequate compliance.

B. Coincident with or before a report from the Director asserting unsatisfactory contractor performance is sent to a contracting authority, the Director shall notify the contractor of such report in writing and of the contractor's right to be heard as set forth in this subchapter.

C. The contracting authority shall give the contractor an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs with the report of the Director and is satisfied from the evidence that the contractor has failed to comply with the provisions of this subchapter or the promises and/or representations made in a sworn statement pursuant to Section 20.44.070, or with the employment goals established in the contract in accordance with Section 20.44.100, the contracting authority shall so find, and shall not enter into any other contract with such contractor until it is reasonably assured of future satisfactory compliance.

D. Action under this section shall be in addition to other remedies that may be available to the City under the contract.

(Ord. 101432 § 8, 1972.)

SMC 20.44.120 Transition period for pre-qualification.

For a period of three (3) months following the effective date of the ordinance codified in this subchapter, <1> a contracting authority purchasing supplies, materials, or equipment may find a contractor to be pre-qualified for purposes of Section 20.44.050 when the contractor has filed the required information and sworn statement with the Director and such contractor shall continue to be pre-qualified unless the contracting authority, with the advice and recommendations of the Director, finds the contractor not qualified.

(Ord. 101432 § 9, 1972.)

1. Editor's Note: Ord. 101432 became effective on November 9, 1972.

Subchapter II Costs of Enforcement

SMC 20.44.130 Charge imposed.

As of January 1, 1977, to pay the costs of enforcement of anti-discrimination and affirmative action provisions established for City contracts by Ordinance 101432, <1> there is imposed, subject to the limitations set forth in this subchapter, a charge of \$0.0014 on each dollar of the amount of each such contract.

(Ord. 106055 § 1, 1976.)

1. Editor's Note: Ord. 101432 is codified in Subchapter I of this chapter.

SMC 20.44.140 Charges to City utilities.

The Director of Administrative Services shall annually inform the Director of the Department of Human Rights and the City utilities (Light Department, Water Department, Drainage and Wastewater Utility, Solid Waste Utility) of the total amount of expenditures by each such utility for the purchase of supplies, materials or equipment under contracts covered by Section 20.44.050. The Director of Human Rights shall annually bill and each such utility shall pay to the City Finance Director, an amount equal to \$0.0014 per dollar of expenditures for such purchases.

(Ord. 116368 § 244, 1992: Ord. 106875 § 1, 1977: Ord. 106055 §2, 1976.)

SMC 20.44.150 Charges to City department or agency.

Each City department or agency, when entering into contracts involving consultant services, franchises, public improvements, services, leases or concessions, or other contracts requiring inclusion of affirmative action provisions, under Sections 20.44.030 and 20.44.040, shall include with each such contract a form, to be provided by the Human Rights Department, identifying the contract and listing the amount of the contract, the charge to be imposed under this subchapter, and any other information required by the Director of Human Rights. The Director of the Seattle Human Rights Department shall thereupon bill the contracting department or agency on such form and the contracting department or agency shall, upon award of the contract, pay to the City Finance Director from the amount allocated for the contract an amount equal to \$0.0014 on each dollar of such contract, provided that the amount paid in connection with any one (1) contract shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) during any one (1) calendar year and no payment shall be made in connection with contracts for which the amount equal to \$0.0014 on each dollar does not exceed Ten Dollars (\$10.00).

(Ord. 116368 § 245, 1992: Ord. 106055 § 3, 1976.)

SMC 20.44.160 Payments by voucher-Deposit.

Payments made to the City Finance Director under this subchapter shall be by voucher. The City Finance Director shall deposit the proceeds therefrom into the General Fund and transmit a record of such deposits to the Director of the Seattle Human Rights Department. (Ord. 116368 § 246, 1992: Ord. 106055 § 4, 1976.)

SMC Chapter 20.46a Women's And Minority Business Enterprise Utilization

Sections

20.46A.001 Application of chapter.
20.46A.010 Short title.
20.46A.020 Findings.
20.46A.030 Declaration of policy.
20.46A.040 Scope.
20.46A.050 Definitions.
20.46A.060 Powers and duties of Director.
20.46A.080 Annual utilization targets.
20.46A.090 Utilization of WMBEs- Generally.
20.46A.100 Eligibility for participation.
20.46A.110 Set-asides-Type of project; Threshold value of project.
20.46A.120 Set-asides-Establishment.
20.46A.130 Evaluation of bids and proposals.
20.46A.140 Set-asides-Contract amendments, supplements, or change orders.
20.46A.150 Waivers and reduction of set-asides.
20.46A.160 Substitution of WMBEs.
20.46A.170 Certified consultant rosters.
20.46A.180 Monitoring and enforcement.
20.46A.190 Appeal of sanctions.
20.46A.200 Complaints.
20.46A.210 Reporting.
20.46A.220 Review of program.
20.46A.300 Participation-Purchasing contracts.

Severability: If any clause, sentence, paragraph, or part of this chapter, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, or its application to other parties or circumstances.

(Ord. 117080 § 3, 1994.)

SMC 20.46A.001 Application of chapter.

The provisions of this chapter shall apply to all contracts for which bids or proposals are due on or after May 1, 1994.

(Ord. 117080 Section 2(part), 1994.)

SMC 20.46A.010 Short title.

This chapter shall be entitled the "Women's and Minority Business Enterprise Utilization Ordinance" and may be cited as "the WMBE Ordinance."

(Ord. 117080 Section 2(part), 1994.)

SMC 20.46A.020 Findings.

Upon full consideration of all relevant facts, the City Council finds that:

A. In hiring and dealing with contractors and subcontractors of all types, public and private owners, developers, contractors, financial institutions and sureties have discriminated and do discriminate against women-owned business enterprises and minority-owned business enterprises doing business or seeking to do business with The City of Seattle based upon the race and sex of the owners of these businesses. This discrimination has been established by public hearings conducted by the City Council and other local

jurisdictions, and by studies performed for The City of Seattle by consultants. The factual findings of these studies, "Utilization of Minority and Women's Business in the Construction and Consulting fields in King and Pierce Counties" dated January 1990, and "Procurement of Supplies, Materials, Equipment and Nonprofessional Services from Minority and Woman-Owned Business Enterprises by the City of Seattle" dated February 1994, are contained in Comptroller File 296945 and 300127, respectively, and are incorporated herein by this reference.

B. But for the provisions of its past and present minority and women's business enterprise ordinances, the City would have been, and would continue to be, a passive participant in the discrimination against these businesses.

C. The provisions of this chapter are necessary to remedy the discrimination against women-owned business enterprises and minority-owned business enterprises and to prevent the City from financing and participating in this discrimination with its contracting dollars.

D. The market from which the City draws contractors is primarily King County; regardless of its location, however, any women-owned or minority-owned business enterprise that has sought to do business within The City of Seattle is presumed to have been affected by the discrimination that exists within the City.

E. The City is prohibited by state law from helping women-owned business enterprises and minority-owned business enterprises overcome the effects of discrimination through financial assistance or reduction of bonding requirements. While the existence of such alternative remedies must continue to be explored, no other effective race-neutral alternatives presently appear to be available.

F. The January 1990 consultant study has produced statistical data and recommendations for refinements to the City's women's business enterprise and minority business enterprise program which are reflected in this chapter. The February 1994 consultant study produced statistical and anecdotal evidence supporting a women's business enterprise and minority business enterprise preference program for contracts for supplies, materials, equipment, and nonprofessional services as set forth in Seattle Municipal Code 3.18.800 et seq.

(Ord. 117159 Sections 2, 3, 1994; Ord. 117080 Section 2(part), 1994.)

SMC 20.46A.030 Declaration of policy.

The purpose of this chapter is to remedy the effects of discrimination against women-owned and minority-owned business enterprises by increasing the opportunity for such businesses to enter into contracts with the City, and to participate in projects administered or funded by the City. The utilization targets and set-asides established under this chapter shall be reasonably achievable.

(Ord. 117080 Section 2(part), 1994.)

SMC 20.46A.040 Scope.

The provisions of this chapter shall apply to all contracts entered into or awarded by the City, except as may be specifically exempted by this chapter or by rule. A grantee, borrower, or other recipient of funds administered or provided by the City for the purpose of contracting for construction, consulting, procurement, or other services shall comply, as a contract awarding authority, with the provisions of this chapter. Such compliance shall be a condition of eligibility for and receipt of such funds. The provisions of this chapter shall be liberally construed in order to accomplish the policies and purposes set forth herein.

In applying the provisions of this chapter to contracts funded in whole or in part with federal funds and subject to 49 CFR Part 23, Subpart D, references to women-owned business enterprises and minority-owned business enterprises shall also include disadvantaged business enterprises. In the event of a conflict between the provisions of this chapter, or the rules implementing this chapter, and the requirements of 49 CFR Part 23, Subpart D, or any other applicable federal statute or regulation, the provisions of the federal statute or regulation shall control.

(Ord. 117080 Section 2(part), 1994.)

SMC 20.46A.050 Definitions.

A. "Affirmative efforts" means documented reasonable attempts in good faith to contact and contract with women-owned and minority-owned businesses.

B. "Availability" or "available" as used in this chapter refers to a WMBE who is: eligible to participate in the program; capable of performing the item of work in question; and able to perform the work within the time frame required by the bid specifications or request for proposals or qualifications.

C. "Bidder" means any person who submits a bid to provide goods or services to the City, or who participates in a similar manner in any project for which funding is provided or administered by the City.

D. "Capability" or "capable" as used in this chapter means that a WMBE appears able to perform a commercially useful function on the item of work in question.

E. "Combination business enterprise" ("CBE") as used in this chapter means a business that has been certified by OMWBE as a combination business enterprise and is eligible to participate in The City of Seattle WMBE program as set forth in SMC Section 20.46A.100. As used in this chapter references to WMBEs, WBEs and/or MBEs shall refer also to a CBE unless the context of the sentence indicates otherwise.

F. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor.

G. "Contract administering authority" means the City officer, department, commission, employee, or board that is responsible for management of a project. In the case of a project financed by a grant or loan of City funds, "contract administering authority" shall also mean the borrower or grantee of such funds, and may include other governmental or quasi-governmental agencies, nonprofit corporations, or private enterprises.

H. "Contract awarding authority" means the City officer, department, commission, employee, or board authorized to enter into or to administer contracts on behalf of the City. In the case of a project financed by a grant or loan of City funds, "contract awarding authority" shall also mean the borrower or grantee of such funds, and may include other governmental or quasi-governmental agencies, nonprofit corporations, or private enterprises.

I. "Contractor" means a person that has contracted with a contract awarding authority to provide goods or services to the City or to participate in a project for which funding is provided or administered by the City. As used in this chapter, "contractor" includes consultants.

J. "Director" means the Director of the Seattle Human Rights Department ("SHRD") or his or her designee.

K. "Disadvantaged business enterprise" ("DBE") as used in this chapter means a small business which has been certified by OMWBE as a disadvantaged business enterprise. References to WMBEs, WBEs and/or MBEs shall refer also to a disadvantaged business enterprise unless the context of the

sentence indicates otherwise.

L. "Minority business enterprise" ("MBE") as used in this chapter means a business which has been certified by OMWBE as a minority business enterprise and is eligible to participate in The City of Seattle WMBE program as set forth in SMC Section 20.46A.100.

M. "Minority women's business enterprise" ("MWBE") as used in this chapter means a business which has been certified by OMWBE, as a minority women's business enterprise and is eligible to participate in The City of Seattle WMBE program as set forth in SMC Section 20.46A.100.

N. "OMWBE" means the Washington State Office of Minority and Women's Business Enterprises.

O. "Person" includes one (1) or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group of persons, including any official, agent or employee of the City.

P. "Public agency" means any agency, political subdivision, or unit of local government of this state, including, but not limited to, special purpose and local service districts, any agency of the state government, and any agency of the United States.

Q. "Program" means The City of Seattle's Women's and Minority Business Enterprise Program.

R. "Proposer" means a person who submits a proposal to provide goods or services to the City, or participates in a similar manner in any project for which funding is provided or administered by the City.

S. "Set-aside" means that percentage of a City contract which is designated for participation of WMBEs, as established by the Director.

T. "Subcontractor" means any person providing goods or services to a contractor, if such goods or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City or a contract for which funds are provided or administered by the City.

U. "Target" means the level of overall participation by WMBEs on City contracts which the City seeks to achieve in a given year.

V. "WMBE" as used in this chapter shall refer generically to any business certified by OMWBE, whether as a CBE, MBE, MWBE, or WBE, and eligible to participate in The City of Seattle WMBE program, as set forth in SMC Section 20.46A.100.

W. "Women's business enterprise" ("WBE") as used in this chapter means a business which has been certified by OMWBE as a women's business enterprise and is eligible to participate in The City of Seattle WMBE program, as set forth in SMC Section 20.46A.100.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.060 Powers and duties of Director.

A. In addition to duties and powers given to the Director elsewhere, the Director shall:

1. Adopt rules and regulations, in accordance with this chapter and the Administrative Code of The City of Seattle (SMC Chapter 3.02), establishing standards and procedures for effectively carrying out this chapter;

2. Adopt rules and regulations in accordance with the Administrative Code of The City of Seattle (SMC Chapter 3.02) establishing practices and procedures for effectively implementing 49 CFR Part 23, Subpart D2;

3. Provide information and technical assistance to WMBEs to increase their capacity to effectively compete for the award of City contracts;

4. Assist City and community agencies to increase WMBE participation on City contracts;
5. Develop educational programs and otherwise assist WMBEs to compete effectively for City contracts;
6. With the advice of the Director of the Office for Civil Rights and of the directors of other City departments, annually recommend to the Mayor appropriate targets for WBE and MBE utilization;
7. With the advice of the directors of appropriate contract awarding authorities, annually recommend to the Mayor appropriate goals for DBE utilization in federally funded, City-administered projects where utilization of such businesses is required by state or federal law;
8. Request and review relevant records, information, and documents maintained by contract awarding authorities, contract administering authorities, contractors and subcontractors for the purpose of determining compliance with the requirements of this chapter;
9. Review and report to the Mayor and to the City Council on the progress of contract awarding authorities and contract administering authorities toward achievement of the annual target for utilization of WMBEs;
10. Accept certifications by OMWBE of businesses as CBEs, DBEs, MBEs, MWBEs, or WBEs; and provide access to a listing of such businesses for use by contract awarding authorities and contractors;
11. Prior to solicitation of bids or proposals for any City project involving construction or consulting above the threshold amount set forth in SMC Section 20.46A.110, determine the appropriate set-asides for WBEs and MBEs;
12. Prior to award of a contract on which set-asides have been established, evaluate and determine bidder or proposer responsibility with regard to the requirements of this chapter; and
13. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors and subcontractors.

B. The requirements of this chapter are in addition to those imposed by the United States or the State of Washington as a condition of financial assistance or otherwise; therefore, the Director may authorize the substitution of such state or federal women's business enterprise and minority business enterprise requirements for the requirements of this chapter whenever such state or federal requirements are substantially the same as those of this chapter.

C. The Director may enter into cooperative agreements with other public agencies concerned with increasing the utilization of women-owned or minority-owned business enterprises in government contracting, subject to the approval of the legislative authority of the City.

D. The Director may exempt contracts or programs from any or all of the requirements of the ordinance codified in this chapter, or rules and regulations adopted in accordance with this chapter, if it would not impair the purposes of the WMBE program, in acknowledgment of the variability of business agreements entered into by the City, such that the City can be responsible and reasonable in its application of this program. The Director may establish different procedures for different kinds of agreements that are appropriate and fitting with the course of that business activity.

(Ord. 118392 § 41, 1996; Ord. 118338 § 8, 1996; Ord. 117407 § 19, 1994; Ord. 117080 § 2(part), 1994.)

SMC 20.46A.080 Annual utilization targets.

A. The Mayor shall establish annual targets for City-wide utilization of WMBEs. With the advice of the Director, an annual target may be divided between MBE and WBE utilization, and separate targets may be established for contract categories such as construction, consultant, and such other categories as may be deemed appropriate. Separate targets may also be established for projects for which funds are provided or administered by the City.

B. Annual targets shall be expressed in terms of a percentage of the total dollar value of all contracts in a contract category awarded during the year.

C. Annual targets shall be reasonably achievable, shall be designed to further the policies expressed in this chapter, and shall be based upon factors including but not limited to:

1. Anticipated levels of contracting activity in each contract category;
2. The number of businesses eligible to participate in the Program, either as prime or as subcontractors, in each contract category;
3. The total number of businesses doing business with the City, either as prime or as subcontractors, in each contract category;
4. The percentage of minorities and women in the relevant workforce with skills related to each contract category;
5. The rates of new entry by minorities and women into training, education, and occupational opportunities related to each contract category; and
6. The expected percentage, absent discrimination, of minority-owned and women-owned businesses seeking to do business with the City.

D. Each contract awarding authority and each contract administering authority shall endeavor to meet the City-wide annual targets for WMBE utilization. If a contract awarding authority or contract administering authority does not appear able to achieve its utilization targets by any other available alternative, it may, to the extent permitted by law, negotiate exclusively with WMBEs for contracts on which competitive bidding is not required. A contract awarding authority or contract administering authority that has met the annual target shall continue to make affirmative efforts to contract with WMBEs.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.090 Utilization of WMBEs -- Generally.

A. Contract awarding authorities shall:

1. Submit informational copies of all contracts to the Director, except as specifically excluded by the Director by rule;
2. Make affirmative efforts to solicit bids and proposals from WMBEs to act as prime contractors, especially for projects below the threshold values set forth in SMC Section 20.46A.110; and
3. Examine each project for ways to maximize utilization of WMBEs, whether as prime contractors or as subcontractors, to the extent feasible and consistent with state law.

B. In addition to such other requirements as may be set forth elsewhere, the following shall apply to all contracts entered into by the City and to all contracts where funds are administered or provided by the City through grants, loans, or other forms of financing:

1. Bid conditions, requests for proposals, and all other specifications shall require the bidder or proposer to make affirmative efforts to subcontract to or to purchase from WMBEs, and to commit to meeting the WBE and MBE set-asides, if any, established for the project. Requests for proposals for projects on which WMBE set-asides have been waived under SMC Section 20.46A.150 shall require proposers to document the efforts made to contact WMBEs in developing the proposal.

2. When set-asides greater than zero are established for a contract, the contracts shall include the following provision:

This contract hereby incorporates by reference Seattle Municipal Code (SMC) Ch. 20.46A. The failure of the contractor or any subcontractor to comply with any of the requirements of SMC Ch. 20.46A shall be a material breach of contract. The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The City in general, and this Program in particular, are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with SMC Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, the parties agree and stipulate that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside will fairly compensate the City for resulting delays in carrying out the purpose of the program, the costs of meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

3. Contracts, other than leases, shall require that during the term of the contract, the contractor shall:

- a. Meet the WBE and MBE set-asides established for the contract, if any;
- b. Make affirmative efforts to utilize WMBEs in performing the contract, whether as subcontractors, suppliers, or in any other capacity;
- c. Require that all subcontractors make affirmative efforts to utilize WMBEs in performance of the contract;
- d. Maintain records reasonably necessary for monitoring compliance with the provisions of this chapter, and submit such information as may be requested by the Director in order to monitor and enforce compliance; and
- e. Require that subcontractors maintain records reasonably necessary for monitoring the subcontractors' compliance with the provisions of this chapter, and that the subcontractors submit such information as may be requested by the Director in order to monitor and enforce compliance.

4. No contract shall be awarded to any person or business that is disqualified from doing business with the City under the provisions of this chapter or of SMC Chapter 20.44 or 20.46, as now or hereafter amended. No contractor shall subcontract to, or purchase supplies, materials, or services from, any person or business which is disqualified from doing business with the City under the provisions of this chapter or of SMC Chapter 20.44 or 20.46, as now or hereafter amended.

5. The Director may exempt contracts, including leases of City-owned facilities, from any or all of the requirements of this subsection B if it would not impair the purposes of the WMBE program.

C. As required by RCW 35.22.650, and in addition to the requirements of this chapter, the following clause shall be contained in all public works contracts exceeding the sum of Ten Thousand Dollars (\$10,000.00) or Fifteen Thousand Dollars (\$15,000.00) for construction of water mains:

Contractor agrees to actively solicit the employment of minority group members. Contractor further agrees to actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor shall be required to submit evidence of compliance with this section as part of the bid. As used in this contract, the term "minority business" means a business that is eligible to participate in the City of Seattle's WMBE program as set forth in SMC Section 20.46A.100 as now or hereafter amended.

(Ord. 118120 § 1, 1996; Ord. 117080 § 2(part), 1994.)

SMC 20.46A.100 Eligibility for participation.

Participation in the Program shall be limited to those businesses that:

- A. Are certified by OMWBE as a CBE, MBE, MWBE, or WBE, at the time of submission of the bid or proposal or at such other time as designated by the Director by rule; and
- B. Have done business or have sought to do business within The City of Seattle.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.110 Set-asides-Type of project; Threshold value of project.

A. Projects involving construction or consultant services, the value of which equals or exceeds the threshold values set forth in this section, shall be submitted to the Director to be analyzed for establishment of set-asides. Projects not involving construction or consultant services shall not be reviewed for the establishment of set-asides. In determining whether a project equals or exceeds the threshold, the total expected finished value of all phases of the project shall be considered.

B. The threshold values for projects involving the following categories of work shall be as follows:

1. For projects involving construction Fifteen Thousand Dollars (\$15,000.00);
2. For projects involving consultant services, Fifteen Thousand Dollars (\$15,000.00).

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.120 Set-asides-Establishment.

A. The Director will analyze all projects above the threshold dollar amounts set forth in SMC Section 20.46A.110 and will separately determine set-asides for WBE utilization and MBE utilization based on the following factors:

1. The amount of subcontractable work identified by the contract awarding authority;
2. The availability of WMBEs capable of performing each subcontractable item of work; and
3. The level of City-provided or City-controlled funding for the project.

The WBE set-aside shall be established at zero (0) if there are no capable WBEs available to perform any of the subcontractable items of work. The MBE set-aside shall be established at zero (0) if there are no capable MBEs available to perform any of the subcontractable items of work.

B. If the Director finds that:

1. There are no subcontractable opportunities; or
2. There is no City-provided or City-controlled funding for the project; or
3. There are not at least two WMBEs available to perform on the project as a whole, then both the WBE and MBE set-asides shall be established at zero (0).

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.130 Evaluation of bids and proposals.

A. All bidders and proposers shall be required, as part of their submission of bids or proposals, to commit to

meeting the WMBE set-aside percentages established by the Director for the project in question. At the time of submission of the bid or proposal, the bidder or proposer shall submit, along with the bid, a list, in a form prescribed by the Director, identifying the WMBEs that the bidder or proposer intends to use to meet the established set-asides. The list shall specify the item of work each WMBE will perform, and the dollar amounts to be paid to each WMBE. On projects that are unusually complex, upon request of the contract awarding authority, the Director may authorize the contract awarding authority to accept the list of WMBE information up to one (1) hour later than bid submission, but in any event prior to bid opening.

B. Prior to contract award, contract awarding authorities shall deliver to the Director the list of WMBEs submitted by the apparent low bidder or best proposer. The Director will review the list of WMBEs to evaluate the bidder's or proposer's responsibility with regard to the WMBE requirements of the project. A bidder or proposer who has not been disqualified from doing business with any public agency based on a failure to comply with women and minority business enterprise or equal employment opportunity requirements, and whose bid or proposal meets the following criteria will be considered responsible for WMBE purposes:

1. The WMBE information form has been substantially completed;
2. All WMBEs listed on the form are eligible to participate in the program;
3. Each WMBE listed on the form is capable of performing a commercially useful function in the work it has been identified to perform;
4. The total dollar amounts committed to be performed by WMBEs is sufficient to meet the applicable set-asides established by the Director; and
5. Such other factors as the Director shall determine by rule.

C. In the event that any of the criteria in items 1 through 5 of the previous subsection are not met, the Director may allow the bidder or proposer to supplement the list of WMBEs to show sufficient WMBE participation to meet the set-asides established for the project. In no event will a bidder or proposer be allowed to remove WMBEs from the list without the approval of the Director.

D. Upon completion of the review, the Director shall issue a finding stating whether or not the bidder or proposer is responsible with respect to the WMBE requirements for the project. If the Director determines that the bidder or proposer is responsible, the Director shall forward to the contract awarding authority a list of the WMBE subcontractors that will be made a condition of award of the contract. If the Director determines that the bidder or proposer is not responsible, the contract awarding authority may award the contract to the next lowest responsive and responsible bidder or proposer, or may reject all bids or proposals.

E. For Public Works contracts executed pursuant to Chapter 39.10 RCW, the Director is authorized to modify the submission and responsibility analysis deadlines of this subsection.

(Ord. 118338 § 6, 1996; Ord. 118088 § 1, 1996; Ord. 117080 § 2(part), 1994.)

SMC 20.46A.140 Set-asides-Contract amendments, supplements, or change orders.

A. If a contract is initially awarded for less than the applicable threshold amount set forth in SMC Section

20.46A.110, and is subsequently amended, supplemented, or changed to exceed the threshold value, the project shall be submitted to the Director to be analyzed for establishment of set-asides. Submission to the Director shall occur prior to the execution of any contract amendment, supplement, or change order, or prior to the performance by the contractor of any work not called for in the original contract, whichever occurs first.

B. Prior to any contract amendment, supplement or other change involving a contract for consultant services which affects the total dollar value of the project by at least the threshold value set forth in SMC Section 20.46A.110, the Director shall review such change in accordance with the applicable rules and this chapter to determine the impact of such change on the WMBE requirements of the contract. The Director shall determine whether the levels of WMBE participation initially established for the contract will be maintained, increased, or reduced. A contractor is required to make affirmative efforts to utilize WMBEs in performing work on any contract amendment or supplement for which no set-asides are established.

C. For contracts involving construction, the WMBE set-aside percentages initially established for the contract will apply to the aggregate final dollar value of the contract including all change orders, subject to the exceptions included in this subsection. A contract awarding authority may request that the dollar amount of a change order be exempted from the aggregate final dollar value of the contract, or that a different set-aside percentage be applied to the change order.

D. Contract awarding authorities shall promptly notify the Director of all contract amendments, supplements, or change orders affecting the dollar value of construction or consultant service contracts, regardless of whether any action by the Director is required.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.150 Waivers and reduction of set asides.

A. The analysis of a project for establishment of set-asides and the evaluation of bids and proposals is waived:

1. If the award of contract is necessary to respond to an emergency which endangers the public health, property or safety; or

2. For other good cause shown to the Director in writing, prior to solicitation of bids.

B. Waiver of initial analysis and establishment of set-asides does not waive any other provision of this chapter, including the obligation to make affirmative efforts to utilize WMBEs in the performance of the contract. This waiver shall apply only to the initial establishment of set-asides and shall not waive subsequent review by the Director of contract amendments, change orders, or supplements.

C. The evaluation of contract amendments, change orders, or supplements for establishment of set-asides shall be separately waived if the amendment, change order, or supplement is necessary to respond to an emergency which endangers the public health or safety.

D. The Mayor may waive the set-aside requirements of this chapter whenever he or she finds that compliance with the set-aside requirements would impose an unwarranted economic burden or risk on the City when compared to the degree to which the purposes and policies of this chapter would be furthered by requiring compliance.

E. If, after bids or proposals are received, the contract awarding authority can demonstrate to the Director that the available WBEs or MBEs have given price quotes that are unreasonably high in that they exceed competitive bid levels beyond amounts that can be attributed to cover costs inflated

by the present effects of discrimination, the contract awarding authority or contract administering authority may request a reduction in either the WBE or MBE set-aside, or both.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.160 Substitution of WMBEs.

A. Removal or substitution of any WMBE named as a condition of award, or addition of WMBEs after approval which are necessary to meet the established set-asides, shall be made only for good cause and with the concurrence of the Director and the approval of the contract administering authority.

B. In reviewing a request for substitution of a WMBE, the Director shall consider the following criteria:

1. Whether the WMBE to be added is eligible to participate in the program;
2. Whether the WMBE to be added is capable of performing the work it has been identified to perform;
3. Whether removal or substitution of a WMBE will reduce the projected WBE or MBE participation below the established set-aside; and
4. Such other criteria as the Director shall establish by rule to prevent substitution of WMBEs for reasons contrary to the intent of this chapter.

SMC 20.46A.170 Certified consultant rosters.

A. A department's solicitation and selection process for establishing a certified roster of consultants pursuant to SMC Sections 3.114.150 and 3.114.160, and a standard form of contract authorized by SMC Section 3.114.160 C shall be reviewed by the Director for compliance with this chapter.

B. Departments using such rosters shall make quarterly reports to the Director on the use of WMBEs from such rosters. A department's utilization of WMBEs from certified rosters shall be included in reviewing the department's compliance with annual utilization targets.

C. Contracts awarded to consultants selected from the roster shall require the consultant to make affirmative efforts to subcontract to WMBEs should subcontracting become necessary.

D. Each roster shall include a minimum of one (1) WBE, and one (1) MBE, if qualified WBEs and MBEs, respectively, are available.

E. Contracts shall be awarded to consultants on the roster in accordance with their ability to complete assigned projects in a timely manner and in a manner that distributes contracts among the consultants on the roster. A department may select a WMBE for a particular assignment or project in order to increase the participation of such enterprises in departmental contracting.

F. If the Director determines that a department using certified rosters is not making satisfactory progress in meeting its targets for WMBEs under the roster system, the Director may require the department to deviate from its selection system within a roster in order to increase the utilization of WMBEs on the rosters for particular assignments or projects.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.180 Monitoring and enforcement.

A. it is a violation of this chapter for a contractor or

subcontractor to fail to comply with any of the provisions of this chapter or to engage in conduct which results in a failure to meet the subcontracting requirements established for the contract on which the contractor or subcontractor is performing. It is a violation of this chapter for a contractor or subcontractor to engage in conduct which results in a WMBE subcontractor's failure to perform a commercially useful function, regardless of whether the subcontracting requirements established for the contract are met.

B. The Director shall conduct investigations to monitor compliance with the requirements of this chapter and shall enforce compliance through the assessment of liquidated damages and the imposition of sanctions commensurate with the seriousness of the violation. Prior to the imposition of sanctions, the Director may attempt to resolve any violation through conciliation.

C. Prior to contract close-out by the contract awarding authority or contract administering authority, the Director shall evaluate all contracts for compliance with the requirements of this chapter. The Director shall inform the contract awarding authority or contract administering authority of the contractor's compliance status.

D. In the event of a failure by a contractor to meet either the WBE set-aside or the MBE set-aside, or both, the Director shall determine and assess the appropriate amount of liquidated damages.

E. In consultation with the contract awarding authority or contract administering authority, the Director shall determine and impose appropriate sanctions for noncompliance, including but not limited to:

1. Withholding of funds;
2. Imposition of a civil fine or penalty;
3. Disqualification of a bidder, proposer, contractor, subcontractor, or other business from eligibility for bidding on or entering into or participating, as a subcontractor or in any other manner, in a contract with the City for a period not to exceed five (5) years.

F. The Director shall set forth the sanctions and/or liquidated damages to be imposed and the reasons therefor in a written order. The Director shall promptly furnish a copy of the order to the contract awarding authority or contract administering authority, and shall mail a copy by certified mail, return receipt requested, to the person being sanctioned.

(Ord. 117159 § 4, 1994; Ord. 117080 § 2(part), 1994.)

SMC 20.46A.190 Appeal of sanctions.

A. Any person against whom sanctions have been imposed by the Director may appeal within fifteen (15) days from the date the Director's decision was mailed to the person being sanctioned, by filing a Notice of Appeal with the Office of the Hearing Examiner.

B. Within forty-five (45) days after receiving the Notice of Appeal, the Hearing Examiner shall convene the appeal hearing. Written notice of the hearing date shall be given to the appellant and to the Department at least thirty (30) days prior to the hearing.

C. Within thirty (30) days after conclusion of the appeal hearing, the Hearing Examiner presiding at the hearing shall prepare a written decision and order. The final decision shall be filed as a public record with the City Clerk, and copies thereof mailed to each party of record and to the Director.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.200 Complaints.

A. Any person who has reason to believe that a violation of this chapter is occurring or has occurred may file a complaint in writing, signed and dated, with the Director. The complaint shall be filed no later than one hundred eighty (180) days after the date of an alleged violation or the date on which a continuing course of conduct in violation of this chapter was discovered.

B. The Director shall cause a prompt investigation of the complaint to be conducted in accordance with rules promulgated under this section. The Director shall have the authority to sign and issue subpoenas requiring the attendance of witnesses, the production of evidence including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed, or access to evidence for the purpose of examination and copying. The Director shall also have the authority to conduct discovery procedures, including but not limited to the issuance of interrogatories and taking of depositions.

C. Failure or refusal by any person to cooperate with the investigation of a complaint shall constitute a separate violation of this chapter.

D. The results of the investigation shall be reduced to written findings of fact and a determination by the Director whether or not a violation of this chapter has occurred. If the Director determines that a City department has committed a violation of this chapter, the finding and determination shall be forwarded to the Mayor. If the Director determines that a contractor or subcontractor has committed the violation, the Director shall attempt to conciliate the matter or shall determine appropriate sanctions, as set forth in SMC Section 20.46A.180.

E. No City department, contractor, or other person shall intimidate, threaten, coerce, discriminate, or otherwise retaliate against any individual because that individual has filed a complaint or cooperated with the investigation of a complaint under this section, or for the purpose of interfering with any of the requirements of this chapter. Such retaliation shall constitute a separate violation of this chapter.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.210 Reporting.

A. Contract awarding authorities and contract administering authorities shall keep complete and detailed records regarding compliance with this chapter and shall submit them to the Director upon request. The Director shall be responsible for gathering all information concerning compliance with this chapter and shall have access to all relevant City records.

B. Each department shall submit to the Director quarterly and annual reports on its performance in meeting the annual targets established under this chapter.

C. If the Director finds that a contract awarding authority or contract administering authority has not complied with the policies and purposes of this chapter, the finding shall be forwarded to the Mayor and to the contract awarding authority or contract administering authority.

D. The Director shall report annually to the Mayor and the City Council on utilization of WMBEs during the preceding calendar year.

(Ord. 117080 § 2(part), 1994.)

SMC 20.46A.220 Review of Program.

The City Council shall review the implementation of this chapter and whether pervasive discrimination against WMBEs continues in the relevant private-sector markets every five (5)

years to determine whether the requirements of this chapter shall remain in effect. The first such review of the requirements for construction and consultant contracts shall occur during 1995. The first such review for purchasing contracts shall occur in 1999. If the City Council determines that the requirements of any part of this chapter are no longer necessary to prevent pervasive discrimination against WMBEs in the private sector from affecting the City's contracting processes, the relevant parts of this chapter shall be repealed.

(Ord. 117159 § 5, 1994: Ord. 117080 § 2(part), 1994.)

SMC 20.46A.300 Participation-Purchasing contracts.

All contracts awarded by the Executive Services Director for the purchase of supplies, materials, equipment and services, the estimated cost of which equals or exceeds One Thousand Dollars (\$1,000.00), shall be awarded and administered in accordance with the following standards and procedures and in accordance with rules adopted by the Executive Services Director to carry out the provisions of this section. The Executive Services Director shall:

A. Make affirmative efforts to solicit bids from WMBEs qualified to supply supplies, materials, equipment, or services. Such efforts may include, but not be limited to, arranging contracts by size and type of supply, material, equipment, or service to enhance the possibility of participation by WMBEs, and providing information and technical assistance to WMBEs to promote their ability to compete effectively for city contracts;

B. Provide WMBEs every practical opportunity to submit bids. To encourage submission of bids by WMBEs, the Executive Services Director shall:

1. Rank bidders whose bids are within five percent (5%), or a lower percent as determined by the Executive Services Director, of the bid made by the lowest and best bidder as follows: first, WMBEs; second, non-women's business enterprises and non-minority business enterprises, or,

2. Encourage subcontracting of WMBEs in contracts to be awarded through the request for proposal process. Such encouragement may include awarding bonus evaluation points on the financial element of proposals to proposers who have included women business enterprise and/or minority business enterprise subcontracting participation in their proposals; provided, participation shall become a requirement of the contract awarded to a proposer who has included participation in its proposal and such participation shall be monitored and enforced by the Executive Services Director per SMC Section 20.46A.180; and

C. Assist City agencies in their utilization of WMBEs in the purchase of supplies, materials, equipment, and services by:

1. Providing information to City agencies about WMBEs qualified to supply supplies, materials, equipment or services,

2. Recommending to the Mayor annual targets for WMBEs by City agencies; and

3. Reporting to City agencies at least annually their utilization of WMBEs.

(Ord. 118397 § 115, 1996: Ord. 117159 § 6, 1994.)

